



## **Town of Arlington, MA Redevelopment Board**

### **Agenda & Meeting Notice May 15, 2017**

The Arlington Redevelopment Board will meet Monday, May 15, 2017 at 7:30 PM in the  
**Town Hall Annex, Second Floor Conference Room**

**1. Continued discussion about April 12, 2017 letter from Madeleine Aster, on behalf of Alewife and North Cambridge Neighborhoods, regarding development at 195 & 211 Concord Turnpike**

7:30-7:45p.m.

- *Board members will continue discussion from April 24, 2017.*

**2. Central School Lease of Space: Arlington Center for the Arts**

7:45-8:00p.m.

- *Board will discuss lease details.*

**3. Director's Report**

8:00-8:15p.m.

- *Director will make a presentation.*

**4. Approval of Meeting Minutes**

8:15-8:30p.m.

- *Board members will approve Meeting Minutes from April 24, 2017 and May 1, 2017.*

**5. Correspondence Received**

- *Letter dated May 3, 2017, Jennifer Ryan, President, Arlington Land Trust, re: proposed residential project, Lanes & Games site.*
- *Memo dated May 10, 2017 from the Transportation Advisory Committee*



## Town of Arlington, Massachusetts

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**Continued discussion about April 12, 2017 letter from Madeleine Aster, on behalf of Alewife and North Cambridge Neighborhoods, regarding development at 195 & 211 Concord Turnpike**

**Summary:**

7:30-7:45p.m.

- *Board members will continue discussion from April 24, 2017.*

**ATTACHMENTS:**

Type	File Name	Description
▢ Reference Material	Letter_from_Madeleine_Aster.pdf	Letter received from Madeliene Aster
▢ Reference Material	The_Residences_at_Alewife_Station_Plans.pdf	Residences at Alewife Station Site plans
▢ Reference Material	Public_Records_Request.pdf	Public Records Request Abutter Notification
▢ Reference Material	City_of_Cambridge_Planning_Board_Decision.pdf	City of Cambridge Planning Board Decision

Arlington Planning and Community Development  
730 Mass Ave. Annex  
Arlington, MA 02476

Dear Director Raitt and Planning Board Members,

We are writing to voice our concerns over the Residences at Alewife development with 320 units and 242 parking spaces to be built in the floodplain, as approved by the Cambridge Planning Board on Tuesday, April 4, 2017. We urge the Board to appeal the decision within the 20-day time period and request time to seek additional studies in how this will impact Arlington for the following reasons:

### **SOIL CONTAMINATION**

1. The soil is heavily contaminated with recorded soil samplings containing as much as 100,000 parts per million of lead, as well as numerous other industrial chemicals (methylene chloride, acetone, MEK and toluene, and more) in the soil and groundwater at the site, to the point where past filings have questioned whether the site can be cost-effectively remediated at all. We believe a thorough remediation would be essential for any reuse of the site.
2. The environmental investigations of the site have a long history, extending back twenty years. The state Department of Environmental Protection has issued an Activity and Use Limitation prohibiting all residential uses on the site since 1997. Simply stated, residential uses are not allowed, by regulation and decision.
3. The same developer of the Residences at Alewife built the 227-unit residential building Vox on Two next door. The residents of this building could be at risk during any construction work on the site.
4. The developer did not include the information on site contamination in his presentation to the Cambridge Planning Board. The history of contamination was discovered independently by Cambridge residents.

### **TRAFFIC AND TRANSIT**

1. For a Project Review Special Permit, the Cambridge Zoning Ordinance Section 19.20 specifies that the Planning Board must make a determination that the project will not have "a substantial adverse impact on city traffic." Presently, Route 2 traffic is congested for several hours of the day, and the new development will make traffic incrementally worse by some 840 daily vehicle trips. The Planning Board has no definition or standard for "substantial adverse impact on city traffic" and thus no basis for its judgment in this case.
2. The developer's Traffic Impact Study stated that there had been no crashes recorded at the Vox on Two driveway but investigation by Cambridge residents showed that there had been 19 accidents in the past 12 years at this location, as reported by the MASSDOT Crash Portal. <http://services.massdot.state.ma.us/crashportal/> and shown by the attached data sheet.
3. The traffic is highly congested along Routes 2 and 16 during peak hours and other times of the day. Drivers may seek alternate routes on local residential streets in Arlington, Belmont and Cambridge.
4. According to the developer's Transportation Impact Study, the Residences at Alewife Station will generate 1,000 daily transit trips. The report fails to consider the ability of the Red Line to handle more riders, because the current capacity limits on the Red Line are already surpassed. The Report does not address how bus passengers from Arlington, Belmont, Cambridge and other towns will be able to get to the Alewife T station.
5. ~1,500 more apartments have already been approved for future construction in the floodplain.
6. A 530 multi-unit site on Wheeler Street in Cambridge is pending approval, which will add more congestion to the Alewife Brook Turnpike.
7. The Cambridge comprehensive planning process, called Envision Cambridge, is proposing

extensive new development in the Route 2, Triangle and Quadrangle areas, without significant improvements to transportation infrastructure and without addressing the severe Parkway traffic congestion that today extends from Massachusetts Avenue and past Concord Avenue in both directions. The Planning Board is routinely approving new development proposals at Alewife that will add new traffic to already congested conditions. Roadways simply do not have the capacity to handle more traffic. Diverting traffic to residential streets in Arlington, Belmont and Cambridge will diminish the quality of life for the existing residents and will present major safety concerns.

## **FLOODPLAIN**

In his testimony before the Cambridge Planning Board on April 4, Stephen Kaiser identified the water depths at numerous Alewife locations during a hurricane similar to Hurricane Sandy in New York City in 2012. A sampling of the water depths is listed below:

<b>Location</b>	<b>Feet</b>
Alewife Brook Parkway, North Cambridge at playground	6
Acorn Park Road, near parking lot	7.5
Route 2 near Lake Street off ramp	6
Route 2 at Lanes and Games site	5.5
CambridgePark Drive at Alewife T station	4
Ramp from MBTA station to Route 2	4
Rindge Avenue	1.5
Electric Power sub-station	2.5
Wheeler Street	2.5 to 3
Concord Avenue	3
Fresh Pond pathway	4

Note that the flood waters would be crossing Concord Avenue with a depth of three feet and would continue to flow into the Fresh Pond reservoir. City emergency crews would probably need to build an extensive sandbag wall at least four feet high in order to prevent flood waters from penetrating the reservoir.

The developer is planning design changes in the new development to recognize the combination of: 2070 flooding runoff, tidal surges from Boston Harbor, increased ocean elevations caused by climate change. These changes are clearly inadequate, given the magnitude of future flooding. The threat to residents confronting 5 1/2 feet of water on Route 2 has not been recognized. The only accessible route by emergency vehicles to access the Route 2 site would be via Rindge Avenue, which would be flooded to a depth of 1 1/2 feet.

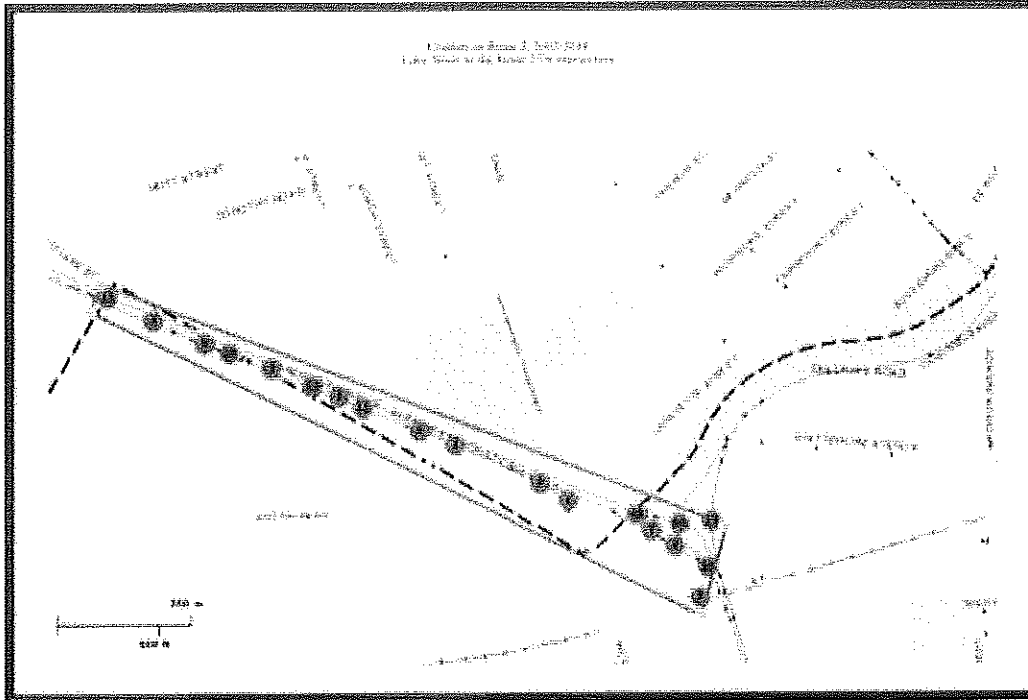
For the above reasons, we hope you will consider appealing the Cambridge Planning Board decision.

Thank you,

Madeleine Aster, on behalf of Alewife and North Cambridge Neighborhoods



## Crash Data from MassDOT

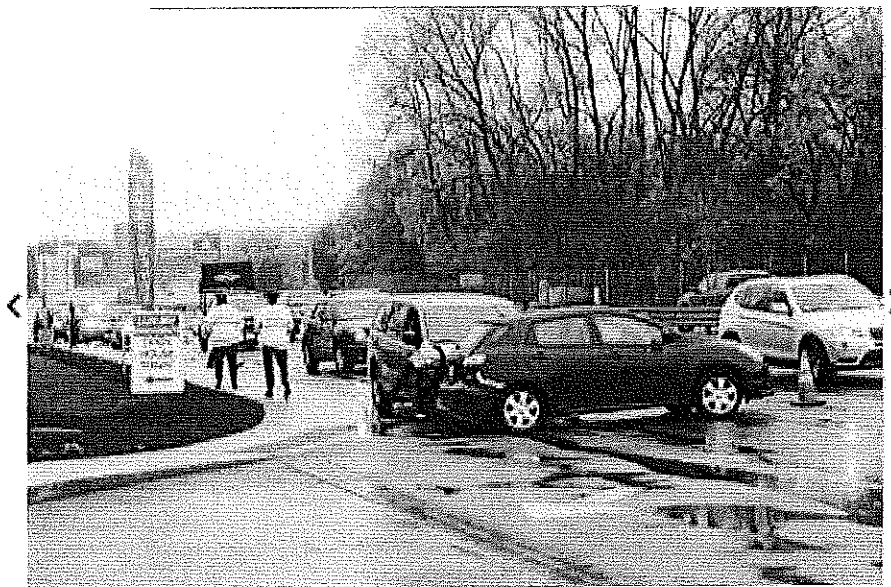


Crashes on Rte. 2, 2002-2014 Source: MASSDOT Crash Portal:

<https://services.massdot.state.ma.us/crashportal/>

Crash dated May 2, 2011 at 223 Concord Turnpike (Vox on Two)

### Three hospitalized after Route 2 crash in Cambridge



WEEB PHOTO

WEEB PHOTO

State police investigated a crash involving a Dodge Charger and a Toyota Matrix in front of the Concord Turnpike, at Route 2 East in Cambridge, Thursday, May 2, 2011. A passenger in the Dodge was hospitalized with serious injuries and the Toyota driver was hospitalized with minor injuries. (WEEB PHOTO) (WEEB PHOTO) (WEEB PHOTO)

## Residences at Alewife Station

195 and 211 Concord Turnpike, Cambridge--Replacing Lanes and Games and Gateway Inn

### Project Summary

Units: 320 total rental units; 74 are affordable  
(66 studios, 155 one-bedrooms, 87 2-bedrooms, 12 three-bedroom)  
Parking: 243 parking spaces (.75 parking spaces per unit)  
Bike parking: 336 long-term bike spaces, 38 short-term bike spaces  
Developer: Criterion Development Partners  
Architect: Icon Architecture





THE  
RESIDENCES  
AT ALEWIFE  
STATION

195 & 211 CONCORD  
TURNPIKE  
CAMBRIDGE, MA

CPC-T HOLDINGS, LLC

ARCHITECT

**E-ICON**  
ARCHITECTURE

101 SUMMER ST BOSTON MA 02110

CONSULTANT

STAMP

KEY PLAN

	03/21/2017	SUPPLEMENT
	01/17/2017	SPECIAL PERMIT
MARK	DATE	DESCRIPTION

PROJECT NUMBER: 215040

DRAWN BY:

CHECKED BY:

SHEET TITLE

VOLUME 2

G-000

VOLUME 2  
REVISION FOR THE SUPPLEMENT TO THE SPECIAL PERMIT  
03/21/2017



# THE RESIDENCES AT ALEWIFE STATION

195 & 211 CONCORD TURNPIKE  
CAMBRIDGE, MA

CPC-T HOLDINGS, LLC

ARCHITECT

**E-ICON**  
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101 SUMMER ST BOSTON MA 02110

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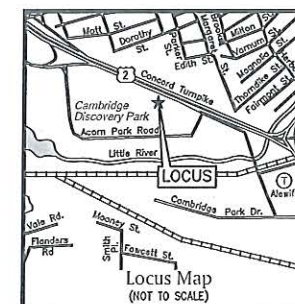
**BSC GROUP**

803 Summer Street  
Boston, Massachusetts  
02127

617 896 4300

STAMP

KEY PLAN



LEGEND

- |                              |   |
|------------------------------|---|
| (S) SEWER MANHOLE            | (N) FEE HOOK (INDICATES COMMON OWNERSHIP) |
| (D) DRAIN MANHOLE            | (IR) IRON ROD                             |
| (W) WATER MANHOLE            | (PK) PK NAIL                              |
| (E) ELECTRIC MANHOLE         | (DH) DRILL HOLE                           |
| (T) TELEPHONE MANHOLE        | (RS) RAILROAD SPIKE                       |
| (C) CABLE MANHOLE            | (LSA) LANDSCAPE AREA                      |
| (M) MANHOLE                  | (PVC) PVC PIPE                            |
| (CB) CATCH BASIN             | (CIP) CAST IRON PIPE                      |
| (HY) HYDRANT                 | (RCP) REINFORCED CONCRETE PIPE            |
| (WG) WATER GATE              | (BIT CONC) BITUMINOUS CONCRETE            |
| (GG) GAS GATE                | (CONC) CONCRETE                           |
| (UP) UTILITY POLE            | (I) INVERT                                |
| (UPW) UTILITY POLE W/LIGHT   | (R) RECORD INFORMATION                    |
| (GUY) GUY POLE               | (VGC) VERTICAL GRANITE CURB               |
| (GA) GUY ANCHOR              | (CC) CONCRETE CURBING                     |
| (LP) LIGHT POLE              |   |
| (LAMP) LAMP                  |   |
| (EH) ELECTRIC HANDHOLE       | (S) SEWER LINE                            |
| (H) HANDHOLE                 | (D) DRAIN LINE                            |
| (TCB) TRAFFIC CONTROL BOX    | (W) WATER LINE                            |
| (UAP) UTILITY ACCESS PANEL   | (G) GAS LINE                              |
| (SIGN) SIGN                  | (E) UNDERGROUND ELECTRIC CONDUIT          |
| (MB) MAIL BOX                | (T) TELEPHONE WIRE                        |
| (MP) METAL POST              | (X) CHAIN LINK FENCE                      |
| (WP) WOOD POST               | (UG) WOOD GUARDRAIL                       |
| (HPS) HANDICAP PARKING SPACE | (SG) STEEL GUARDRAIL                      |
| (MW) MONITORING WELL         | (SCG) STEEL/CABLE GUARDRAIL               |
| (WF) WETLANDS FLAG           | (CBG) CONC/CABLE GUARDRAIL                |
| (DT) DECIDUOUS TREE          | (BL) BRUSHLINE                            |
| (CT) CONIFEROUS TREE         |   |

SCALE: 1" = 30'  
0 15 30 60 feet

## GENERAL NOTES

1. THIS PLAN IS BASED UPON AN ON-THE-GROUND SURVEY PERFORMED BY BSC GROUP, INC. IN MARCH, 2016.
2. HORIZONTAL DATUM IS BASED UPON LAND COURT CASE NO. 23045 AND VERTICAL DATUM IS BASED UPON NAVD '88.
3. LOCUS IS LOCATED WITHIN ZONE AE AS GRAPHICALLY DEPICTED ON FLOOD INSURANCE RATE MAP NUMBER 25017C0419E, EFFECTIVE DATE JUNE 4, 2010.
4. WETLAND RESOURCE AREAS SHOWN HEREON WERE DELINEATED BY BSC GROUP, INC. ON FEBRUARY 26, 2016.

## UTILITY NOTE

EXISTING UTILITIES, WHERE SHOWN HEREON, ARE APPROXIMATE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROPERLY LOCATING AND COORDINATING ANY ON-SITE ACTIVITY WITH DIG-SAFE AND THE APPROPRIATE UTILITY COMPANY AND MAINTAINING EXISTING UTILITY SYSTEM SERVICE. DIG-SAFE SHALL BE NOTIFIED PER THE COMMONWEALTH OF MASSACHUSETTS STATUTE CHAPTER 82, SECTION 40, AT 1-888-344-7233. NO GUARANTEE IS IMPLIED OR INTENDED AS TO THE ACCURACY, LOCATION OR THAT ALL UTILITIES AND/OR SUBSURFACE STRUCTURES ARE SHOWN. THE CONTRACTOR SHALL VERIFY SIZE, LOCATION AND INVERTS OR UTILITIES AND STRUCTURES AS REQUIRED PRIOR TO THE START OF CONSTRUCTION.

I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF THAT THIS PLAN IS BASED UPON AN ON-THE-GROUND SURVEY.



PROFESSIONAL LAND SURVEYOR  
FOR BSC GROUP, INC.

DATE  
01/11/2017



THE  
RESIDENCES  
AT ALEWIFE  
STATION

195 & 211 CONCORD  
TURNPIKE  
CAMBRIDGE, MA

CPC-T HOLDINGS, LLC

ARCHITECT

**E-ICON**  
ARCHITECTURE

101 SUMMER ST BOSTON MA 02110

CONSULTANT



Copley Wolff Design Group  
Landscape Architects & Planners  
140 Bay View Street  
Boston, MA 02116  
P 617-451-9100  
www.cwdfg.com

STAMP

KEY PLAN

MARK	DATE	SPECIAL PERMIT DESCRIPTION
	01/17/2017	

PROJECT NUMBER: 1623.000

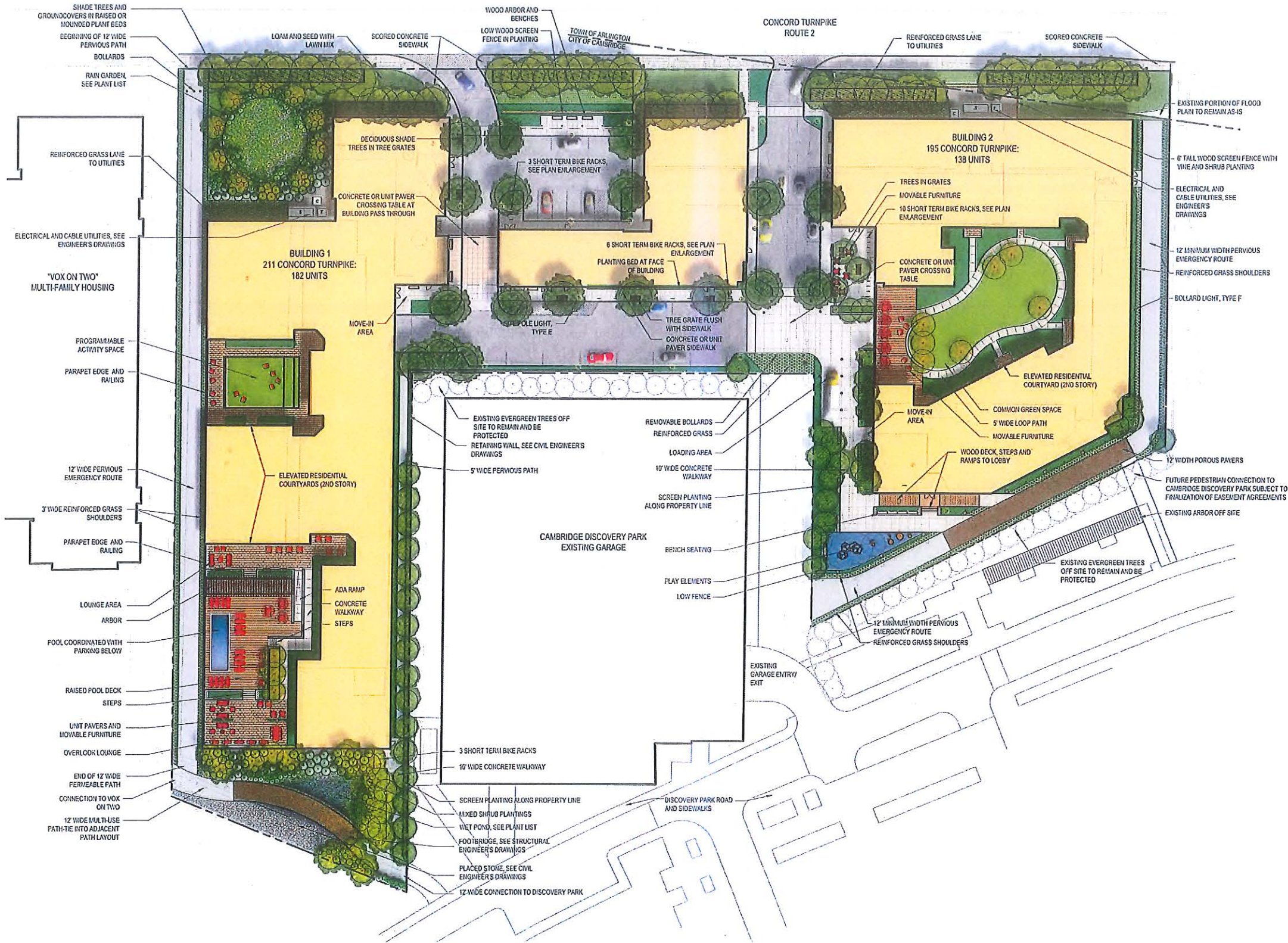
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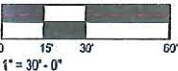
SHEET TITLE

PROPOSED SITE AND  
LANDSCAPING PLAN

L-101



GRAPHIC SCALE







**LEGEND**

FUTURE DEVELOPMENT

PEDESTRIAN PATHS

THE  
RESIDENCES  
AT ALEWIFE  
STATION

195 & 211 CONCORD  
TURNPIKE  
CAMBRIDGE, MA

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CONSULTANT

STAMP

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	03/21/2017	SUPPLEMENT
	01/17/2017	SPECIAL PERMIT
MARK	DATE	DESCRIPTION

PROJECT NUMBER: 215040

DRAWN BY:

CHECKED BY:

SHEET TITLE

CONTEXT PLAN

G-100



Nancy E. Glowa  
City Solicitor

Arthur J. Goldberg  
Deputy City Solicitor

Vali Buland  
First Assistant City Solicitor



Assistant City Solicitors

Paul S. Kawai  
Samuel A. Aylesworth  
Keplin K. U. Allwaters  
Sean M. McKendry  
Megan B. Bayer

Public Records Access Officer

Jennifer Simpson

**CITY OF CAMBRIDGE**

Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

May 8, 2017

**BY EMAIL:** [jraitt@town.arlington.ma.us](mailto:jraitt@town.arlington.ma.us)

Jennifer Raitt

**Re: Public Records Response for 195 and 211 Concord Turnpike**

Dear Ms. Raitt:

I write in response to your e-mail of May 4, 2017, attached hereto, seeking "The abutters list and confirmation of the notice being sent to Arlington related to Case #326 for a development at 195 & 211 Concord Turnpike by Criterion Development Partners".

The City is treating your e-mail inquiry as a public records request pursuant to G.L. c. 66, § 10.

Please find attached documents responsive to your request. Because providing you with the attached documents took less than two hours of staff time to search for and reproduce, and the document is being produced electronically, pursuant to 950 CMR§ 32.07(2)(m), there will be no charge for responding to this public records request.

Sincerely,

Jennifer Simpson  
Public Records Access Officer

Enclosure

---

Liza,

We spoke by phone a couple of weeks ago. I was seeking the abutters list and confirmation of the notice being sent to Arlington related to Case #326 for a development at 195 & 211 Concord Turnpike by Criterion Development Partners. Would you please forward this information to me?

Thank you,  
Jenny

Jennifer Raitt  
Director, Department of Planning and Community Development  
Town of Arlington  
730 Massachusetts Avenue  
Arlington, Massachusetts 02476  
781-316-3092





CITY OF CAMBRIDGE  
ASSESSING DEPARTMENT  
795 MASS. AVE., CAMBRIDGE, MA 02139  
Tel.: 617-349-4343 Fax: 617-349-4357

Robert P. Reardon  
Director of Assessment

Andrew J. Johnson  
Assessor

July 11, 2016

To Whom It May Concern:

The letter is to attest that the attached **Abutters List**, for the following Map & Parcel ID's, is a true City of Cambridge Assessing Department record.

Map and Parcel ID's as

267.1-271	267.1-276
267.1-272	267.1-232
267.1-267	267.2-263
267.1-275	267.2-261
267.2-230	267.1-274
267.2-262	

Sincerely,

Andrew J. Johnson  
Assessor

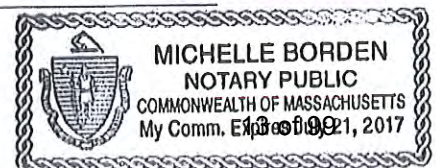
AJJ:eh  
Attachment

COMMONWEALTH OF MASSACHUSETTS Middlesex County

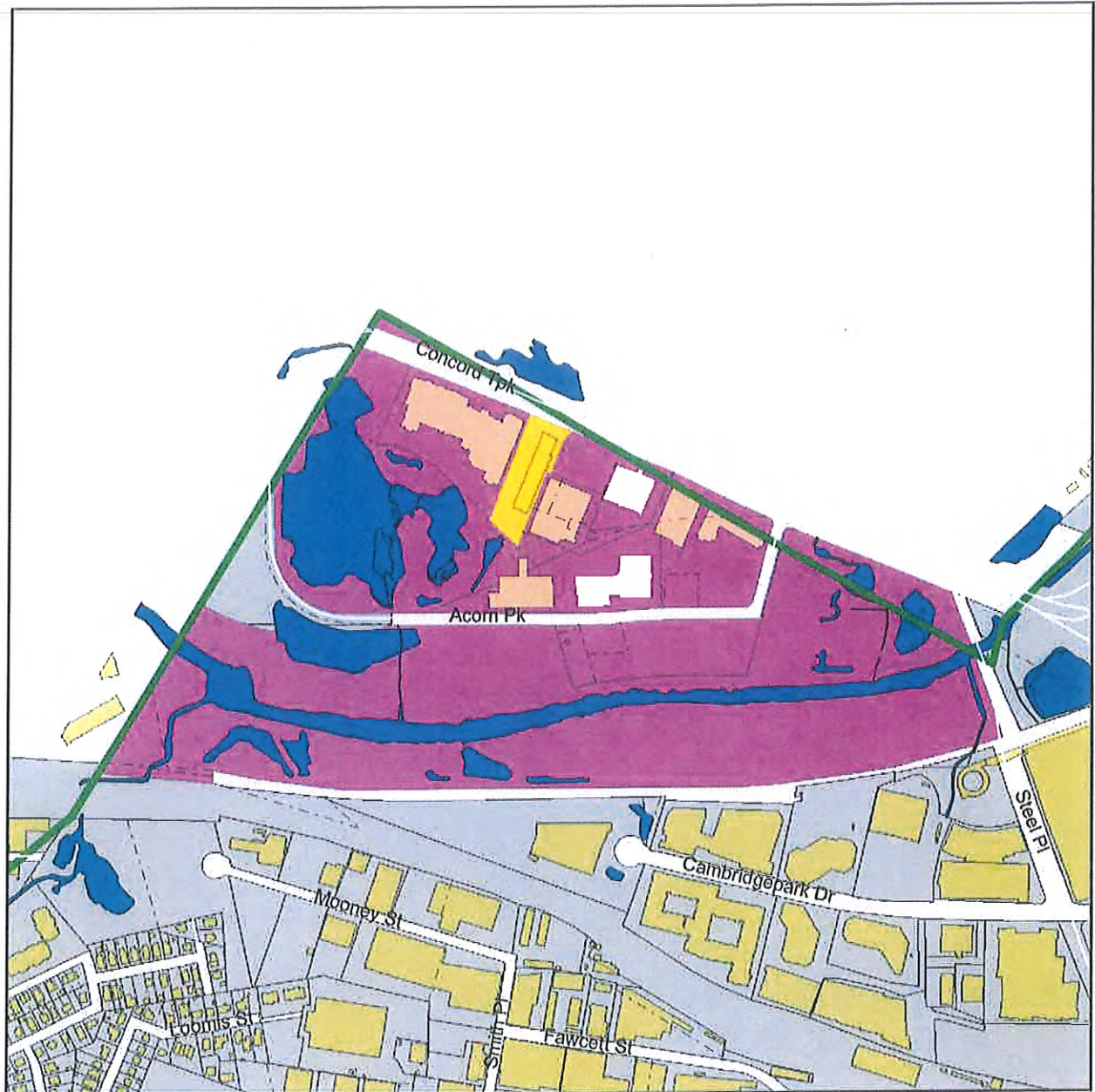
On this \_\_\_\_\_ day of JUL 12 2016, 20\_\_\_\_, before me, the undersigned notary public, personally appeared Andrew Johnson, proved to me through satisfactory evidence of identification, which was MA License to be the person whose name is signed on the preceding or attached document, and acknowledge to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



Parcel ID: 267.1-275



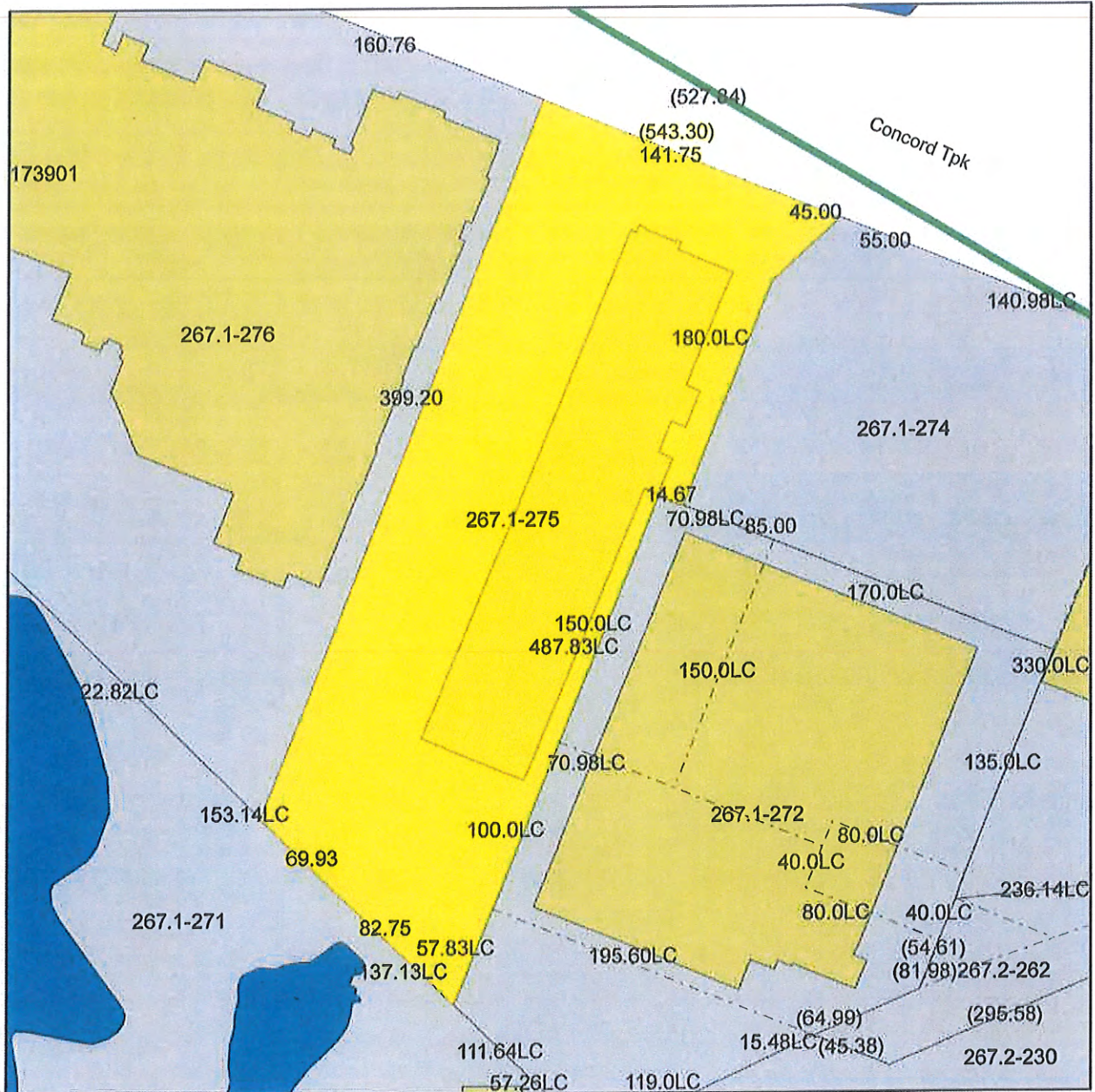
Cambridge, MA Assessing Department

Robert P. Reardon, Director





# Parcel ID: 267.1-275



Cambridge, MA Assessing Department

Robert P. Reardon, Director



267.2/ / 230/ /  
BHX, LLC.  
250 FIRST AVE., SUITE 200  
NEEDHAM, MA 02492-2669

267.1/ / 275/ /  
CAM CAMBRIDGE VENTURES, II LLC &  
P.O. BOX 4900  
SCOTTSDALE, AZ 85261

267.1/ / 271/ /  
AP CAMBRIDGE PARTNERS, LLC. TR.  
ACORN PARK HOLDINGS REALTY TRUST  
250 FIRST AVE., SUITE 200  
NEEDHAM, MA 02494

267.1/ / 272/ /  
AP CAMBRIDGE PARTNERS, LLC TR. ACC  
PARK HOLDINGS REALTY TRUST  
C/O ACORN PARK I REALTY TRUST  
250 FIRST AVE., STE 200  
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267.1/ / 267/ /  
MASSACHUSETTS COMMONWEALTH OF  
STATE HOUSE  
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267.2/ / 261/ /  
AP CAMBRIDGE PARTNERS LLC., TR. ACC  
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267.1/ / 274/ /  
MARTIGNETTI, CARMINA A., ET AL TRS  
C/O CAM 195 CONCORD TPK, LLC &  
DAM 195 CONCORD TPK, LLC  
195 CONCORD TPK. RT. 2E  
CAMBRIDGE, MA 02138

267.2/ / 262/ /  
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DAM 195 CONCORD TPK, LLC  
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**CITY OF CAMBRIDGE**  
**ASSESSING DEPARTMENT**  
 795 MASS. AVE., CAMBRIDGE, MA 02139  
 Tel.: 617-349-4343 Fax: 617-349-4357

*Robert P. Reardon*  
 Director of Assessment

*Andrew J. Johnson*  
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July 11, 2016

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Sincerely,

Andrew J. Johnson  
 Assessor

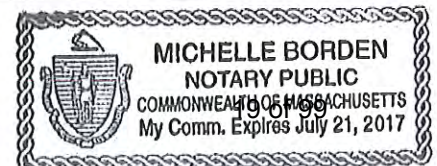
AJJ:eh  
 Attachment

COMMONWEALTH OF MASSACHUSETTS Middlesex County

On this 12 day of JUL 2016, 2016, before me, the undersigned notary public, personally appeared Andrew Johnson, proved to me through satisfactory evidence of identification, which was MA License to be the person whose name is signed on the preceding or attached document, and acknowledge to me that he/she signed it voluntarily for its stated purpose.

Notary Public

My commission expires: \_\_\_\_\_



Parcel ID: 267.1-274



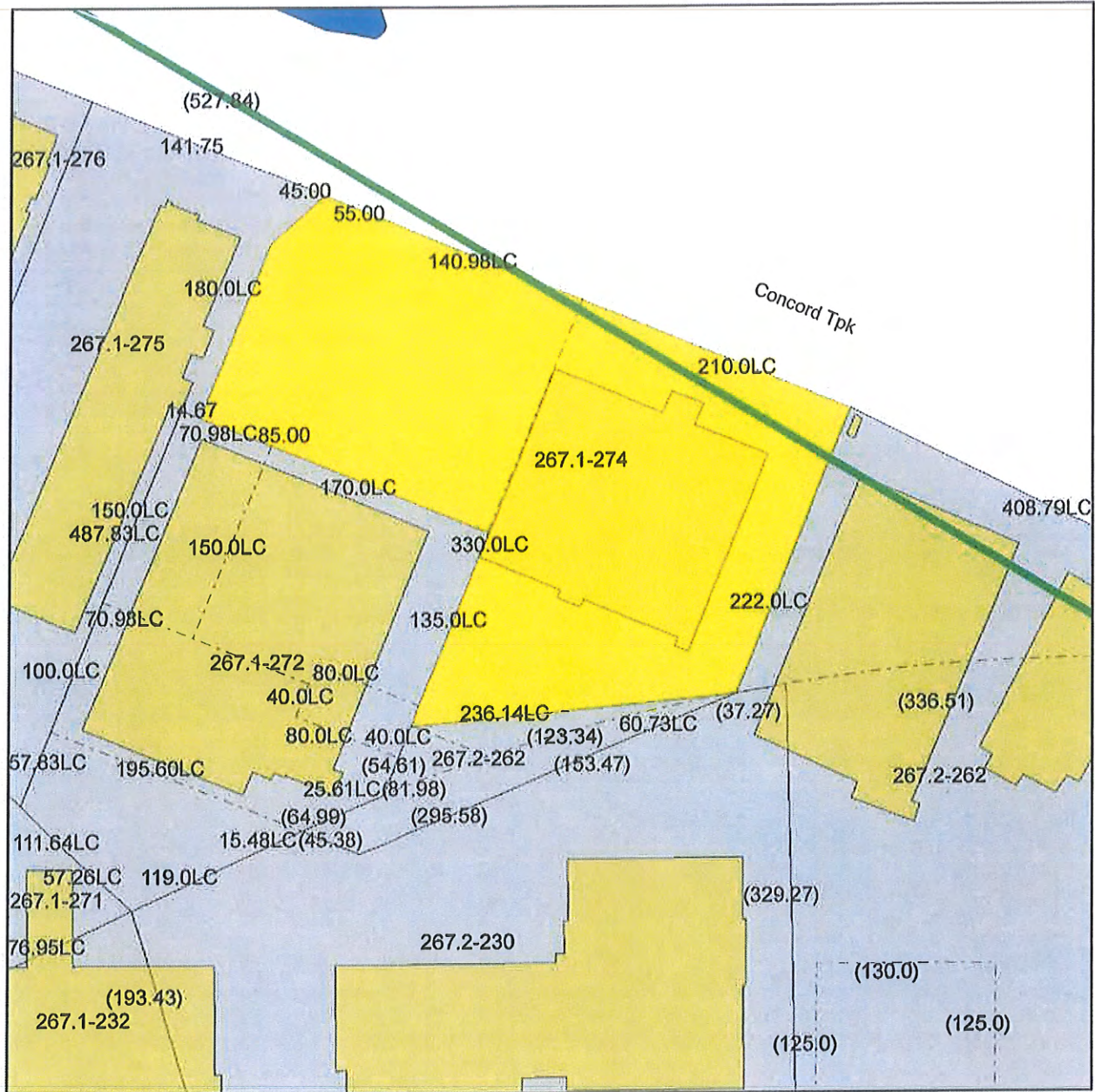
Cambridge, MA Assessing Department

Robert P. Reardon, Director





# Parcel ID: 267.1-274



Cambridge, MA Assessing Department

Robert P. Reardon, Director



267.1/ / 271/ /  
AP CAMBRIDGE PARTNERS, LLC. TR.  
ACORN PARK HOLDINGS REALTY TRUST  
250 FIRST AVE., SUITE 200  
NEEDHAM, MA 02494

267.1/ / 276/ /  
CPC ALEWIFE, L.P  
P.O. BOX 4900  
SCOTTSDALE, AZ 85261

267.1/ / 272/ /  
AP CAMBRIDGE PARTNERS, LLC TR. ACC  
PARK HOLDINGS REALTY TRUST  
C/O ACORN PARK I REALTY TRUST  
250 FIRST AVE., STE 200  
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AP CAMBRIDGE PARTNERS, LLC TR. ACC  
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MASSACHUSETTS COMMONWEALTH OF  
STATE HOUSE  
BOSTON, MA 02133

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MASSACHUSETTS COMMONWEALTH OF  
STATE HOUSE  
BOSTON, MA 02133

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CAM CAMBRIDGE VENTURES, II LLC &  
P.O. BOX 4900  
SCOTTSDALE, AZ 85261

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267.2/ / 230/ /  
BHX, LLC.  
250 FIRST AVE., SUITE 200  
NEEDHAM, MA 02492-2669

267.1/ / 274/ /  
MARTIGNETTI, CARMINE A., ET AL TRS  
C/O CAM 195 CONCORD TPK, LLC &  
DAM 195 CONCORD TPK, LLC  
195 CONCORD TPK. RT. 2E  
CAMBRIDGE, MA 02138

267.2/ / 262/ /  
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Cam Cambridge Ventures LLC  
P O Box 4900  
Scottsdale AZ 85261

BHX, LLC  
250 First Ave, Suite 200  
Needham MA 02492-2669

AP Cambridge Partners, LLC  
Acorn Park Holding Realty Trust  
250 First Avenue, Suite 200  
Needham MA 02494

Massachusetts Commonwealth  
State House  
Boston MA 02123

Martingnetti, Carmine et al  
c/o CAM 195 Concord Turnpike  
Cambridge, MA 02138

CPD Alewife  
P O Box 4900  
Scottsdale, AZ 85261

J Englert, Criterion Partners  
1601 Trapelo Road  
Waltham, MA 02451

Richard McKinnon  
McKinnon Company  
One Leighton St, #1905  
Cambridge, MA 02141

Depart of Housing and Comm Dev  
100 Cambridge St, Suite 300  
Boston, MA 02114 2023



Boston Redevelopment Authority  
City Hall  
Ninth Floor  
Boston, MA 02201

Somerville Planning Board  
Somerville City Hall  
93 Highland Street  
Somerville, MA 02143

Watertown Planning Board  
Town Hall  
149 Main Street  
Watertown, MA 02472

Arlington Planning Board  
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Arlington, MA 02174

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Boston, MA 02111

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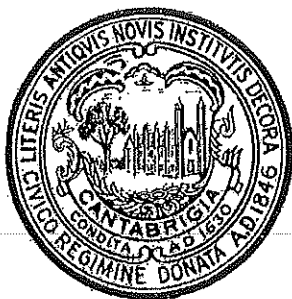
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Boston, MA 02114 2023



CITY OF CAMBRIDGE, MASSACHUSETTS

# PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

2017 MAY -3 AM 10:40  
CITY CLERK  
CAMBRIDGE, MA 02139

## NOTICE OF DECISION

Case Number:	326
Address:	195 & 211 Concord Turnpike
Zoning:	Special District 4A (SD-4A) / Flood Plain Overlay District / Parkway Overlay District
Applicant:	CPC-T Holdings LLC dba Criterion Development Partners 14160 No. Dallas Parkway, Suite 750, Dallas, TX 75254
Owner:	CAM 195 Concord Turnpike LLC, 195 Concord Turnpike, Cambridge, MA 02140; DAM 195 Concord Turnpike LLC, 195 Concord Turnpike, Cambridge, MA 02140; CAM Cambridge Ventures II, LLC, 73 Brayton Point Rd., Westport, MA 02790; DAM Cambridge Ventures II, LLC, 47 Swan Rd., Winchester, MA 01890
Application Date:	February 1, 2017
Date of Planning Board Public Hearing:	February 21, 2017 continued to April 4, 2017
Date of Planning Board Decision:	April 4, 2017
Date of Filing Planning Board Decision:	May 3, 2017
Application:	Project Review Special Permit (Section 19.20), Special Permits for building construction (Section 20.70) and for waiver of ground floor area for parking facilities (Section 5.25.42) in Flood Plain Overlay District, Special Permits to alter green area open space in the front yard (Section 20.64.1.2), to increase the height of the fence (Section 20.65), to site open grade parking areas in front of the building (Section 20.66.2), and to locate mechanical equipment in the front yard (Section 20.67) in Parkway Overlay District, Special Permit to reduce parking (Section 6.35.1), Special Permit to exceed allowed curb cut width (Section 6.43.5), and Special permits to exceed building height (Section 17.42.3) and to reduce yard requirements (Section 17.42.2) in Special District 4A; to construct a multi-family residential development in two buildings with total gross floor area of 324,440 square feet containing 320 residential units, 239 off-street parking spaces accommodated at the basement and ground levels, 336 long-term bicycle spaces, 38 short term bicycle spaces, and landscaped areas accessible to the building residents and general public.
Decision:	GRANTED, with Conditions.

Appeals, if any, shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after filing of the above referenced decision with the City Clerk. Copies of the complete decision and final plans, if applicable, are on file with the Community Development Department and the City Clerk.

Authorized Representative of the Planning Board: Swaathi Joseph

For further information concerning this decision, please contact Liza Paden at 617-349-4647, or [lpaden@cambridgema.gov](mailto:lpaden@cambridgema.gov).

## **DOCUMENTS SUBMITTED**

### Application Documents and Supporting Material

1. Special Permit Application submitted on 1/20/2017, containing the Special Permit Cover Sheet, Dimensional Form, Ownership Certificate, Community Outreach Summary, Project Narrative, Order of Conditions issued by Cambridge Conservation Commission, Flood Certification Report prepared by BSC group dated 1/17/2017, Traffic Impact Study prepared by Vanasse & Associates, Inc. dated January 2017, Tree Study prepared by BSC group dated 10/31/2016, Shadow Study prepared by Icon Architecture, and plan set titled The Residences at Alewife Station, prepared by Icon Architecture, dated 1/17/2017.
2. Presentation slides shown to Planning Board on 2/21/2017.
3. Supplement to Special Permit Application dated 3/21/2017, including revised plan set titled The Residences at Alewife Station, prepared by Icon Architecture, dated 1/17/2017 and revised through 3/21/2017.
4. Presentation slides shown to Planning Board on 4/4/2017.

### City of Cambridge Documents

5. Memorandum to the Planning Board from Department of Public Works staff, dated 2/15/2017.
6. Memorandum to the Planning Board from Community Development Department staff, dated 2/16/2017.
7. Memorandum to the Planning Board from Traffic, Parking and Transportation Department staff, dated 2/16/2017.
8. Memorandum to the Planning Board from Department of Public Works staff, dated 3/28/2017.
9. Memorandum to the Planning Board from Community Development Department staff, dated 3/30/2017.
10. Memorandum to the Planning Board from Traffic, Parking and Transportation Department staff, dated 3/30/2017.

### Other Documents

11. Letter to the Planning Board from Stephen Kaiser, dated 2/16/2017.
12. Letter to the Planning Board from Alexander M. Taylor, dated 2/21/2017.
13. Letter to the Planning Board from John Attanucci, dated 2/21/2017.
14. Letter to the Planning Board from Fresh Pond Residents Alliance, dated 3/4/2017.
15. Letter to the Planning Board from Cambridge Bicycle Committee, dated 3/15/2017.



16. Letter to the Planning Board from Kiyan Zayed, dated 3/19/2017.
17. Letter to the Planning Board from Cambridge Pedestrian Committee, dated 4/3/2017.
18. Letter to the Planning Board from Fresh Pond Residents Alliance, dated 4/4/2017.
19. Letter to the Planning Board from Cambridge Committee on Public Planting, undated.

## APPLICATION SUMMARY

The Applicant proposes to demolish two existing buildings to construct a multi-family residential development in two buildings with a total of 320 dwelling units, including 239 off-street parking spaces accommodated at the basement and ground levels (further reduced from an initial proposal of 243 spaces due to the elimination of some surface spaces), 336 long-term bicycle spaces, 38 short term bicycle spaces, and landscaped areas accessible to the building residents and general public. The site is located in the Special District-4A (SD-4A) zoning district and the Flood Plain Overlay District and partially in the Parkway Overlay District. The Conservation Commission granted an Order of Conditions in approval of this project. The requested special permits are discussed in detail in the Findings below.

## FINDINGS

After review of the Application Documents and other documents submitted to the Planning Board, testimony given at the public hearing, and review and consideration of the applicable requirements and criteria set forth in the Zoning Ordinance with regard to the relief being sought, the Planning Board makes the following Findings:

### 1. Project Review Special Permit (Section 19.20)

*(19.25.1) Traffic Impact Findings. Where a Traffic Study is required as set forth in Section 19.24 (3) above the Planning Board shall grant the special permit only if it finds that the project will have no substantial adverse impact on city traffic within the study area as analyzed in the Traffic Study. Substantial adverse impact on city traffic shall be measured by reference to the traffic impact indicators set forth in Section 19.25.11 below.*

*(19.25.11) Traffic Impact Indicators. In determining whether a proposal has substantial adverse impacts on city traffic the Planning Board shall apply the following indicators. When one or more of the indicators is exceeded, it will be indicative of potentially substantial adverse impact on city traffic. In making its findings, however, the Planning Board shall consider the mitigation efforts proposed, their anticipated effectiveness, and other supplemental information that identifies circumstances or actions that will result in a reduction in adverse traffic impacts. Such efforts and actions may include, but are not limited to, transportation demand management plans; roadway, bicycle and pedestrian facilities improvements; measures to reduce traffic on residential streets; and measures undertaken to improve safety for pedestrians and vehicles, particularly at intersections identified in the Traffic Study as having a history of high crash rates.*

*The indicators are: (1) Project vehicle trip generation weekdays and weekends for a twenty-four hour period and A. M. and P.M. peak vehicle trips generated; (2) Change in level of service at identified signalized intersections; (3) Increased volume of trips on residential streets; (4) Increase of length of vehicle queues at identified signalized intersections; and (5) Lack of sufficient pedestrian and bicycle facilities. The precise numerical values that will be*

*deemed to indicate potentially substantial adverse impact for each of these indicators shall be adopted from time to time by the Planning Board in consultation with the TPTD, published and made available to all applicants.*

The Applicant submitted a Transportation Impact Study for the proposed project to the Cambridge Traffic, Parking and Transportation Department (TP&T), which was certified as complete and reliable on January 12, 2017, as indicated in a memorandum from Joseph E. Barr, Director of Traffic, Parking and Transportation, dated February 16, 2017.

The Transportation Impact Study identified fifteen instances where the Special Permit Transportation Criteria cited above were exceeded. Four instances resulted from the existing pedestrian level of service at intersections including Alewife Brook Parkway at Alewife Station, Massachusetts Avenue at Alewife Brook Parkway, Alewife Access Ramps at Steel Place, and Lake Street at Route 2 west bound ramps, and the project will not change those existing conditions. The project triggered the bicycle criteria as there is no bicycle facility on Route 2. The Applicant has proposed improvements to the sidewalk on Concord Turnpike, subject to the approval of the Massachusetts Department of Transportation, and to create a pedestrian and bicycle connection to the Discovery Park site contingent on agreement with the abutting property owner.

TP&T submitted a set of recommended mitigation measures in its memo dated February 16, 2017, which were agreed to by the Applicant to the extent reflected in this Decision and the Applicant's submissions. Following comment from the Planning Board, the Applicant proposed additional mitigation measures that were endorsed by TP&T in its memo dated March 30, 2017. Overall, the proposed mitigation would support improvements to pedestrian and bicycle connections throughout the area, support the public bicycle sharing system (Hubway) and carsharing services, study potential measures to improve bus and other transit service in the area, provide transportation amenities to future residents of the project to reduce the need for auto trips, and implement a program of transportation demand management (TDM) measures to further limit the growth of auto trips generated by the project.

Therefore, the Board finds that the proposed project will not have a substantial adverse impact on city traffic within the study area, considering that the Applicant will undertake transportation improvements as recommended by TP&T and that the Applicant will continue to coordinate with the Massachusetts Department of Transportation on matters related to pedestrian, bicycle, and vehicular access and egress along Concord Turnpike.

*(19.25.2) Urban Design Findings. The Planning Board shall grant the special permit only if it finds that the project is consistent with the urban design objectives of the city as set forth in Section 19.30. In making that determination the Board may be guided by or make reference to urban design guidelines or planning reports that may have been developed for specific areas of the city and shall apply the standards herein contained in a reasonable manner to nonprofit religious and educational organizations in light of the special circumstances applicable to nonprofit religious and educational activities.*

The Board finds that the proposed project is consistent with the Urban Design Objectives set forth in Section 19.30, as described below.

*(19.31) New projects should be responsive to the existing or anticipated pattern of development....*

The proposed project is one of the few remaining underdeveloped parcels in a district that was zoned to enable a transition from low-scale uses dominated by surface parking to higher-density mixed-use development that would increase permeable area and stormwater retention. The largest use in the area is the Alewife Brook Reservation, a state-owned conservation land, which the zoning in the area is intended to protect and enhance. The proposed project will not impact the reservation and will provide a vegetated buffer adjacent to the building where it abuts the reservation. The other uses in the district, which were recently developed, include office, hotel, and multi-family residential. The proposed development will add housing units that will contribute to the mix of uses in the area and align with the city's overall growth policies. The project's overall massing and scale fit within the surrounding context and are further enhanced by the improvements to the streetscape and landscape treatment of the yards. The siting and orientation of the building is consistent with existing streetscape patterns in the area and creates a more urban presence along Concord Turnpike while providing opportunities for usable open space and connections to the uses and pedestrian/bicycle network to the south of the site.

*(19.32) Development should be pedestrian and bicycle-friendly, with a positive relationship to its surroundings. . . .*

The project enhances the pedestrian and bicycle activity in the immediate area. Entries are oriented toward anticipated routes of pedestrian and bicycle movement. The project incorporates convenient pedestrian and bicycle connections to the adjacent Discovery Park property (subject to agreement with the abutting property owner), which in turn provides pedestrian and bicycle connections to the Alewife Reservation and Alewife MBTA station, which will be an attractive commuting option for future residents of the building. This connection also leads to several bikeways and pedestrian amenities that serve the Alewife district. The front yard landscape, outdoor seating areas, and a range of plantings provide an expanded pedestrian experience. The proposed design provides open space and landscaping that enhance the visual and environmental quality of the area for pedestrians. Exterior (short-term) and interior (long-term) bicycle parking is also provided per zoning requirements.

*(19.33) The building and site design should mitigate adverse environmental impacts of a development upon its neighbors. . . .*

In adhering to the requirements of the Flood Plain Overlay District, and providing a vegetated buffer adjacent to protected wetlands, the proposed project mitigates the potential adverse impact of a development adjacent to an environmentally sensitive area. Throughout the review process, significant attention was given to the treatment of

façades and landscape areas to make them more attractive to passersby, and to respond to the finer grain scale of the neighborhood. In addition, the proposed building height and scale are compatible with surrounding uses. Mechanical equipment and vehicular access/egress areas are sited and shielded such that they will not adversely impact the surrounding buildings. Outdoor lighting will be designed to provide safety while minimizing light impacts on the neighborhood. The exact façade material treatments and landscape features will be subject to ongoing review by City staff. Trash and other service functions are housed internally and serviced through the driveway that provides internal circulation within the site. The Applicant has located the project's electrical equipment in as unobtrusive a location as possible and with appropriate screening, but within the front yard setback, which requires and has received Planning Board approval (discussed further below in these Findings). In accordance with the City's sustainability goals, the roof is designed to accommodate future installation of solar panels.

*(19.34) Projects should not overburden the City infrastructure services, including neighborhood roads, city water supply system, and sewer system. . . .*

Traffic impacts have been discussed previously in these Findings. The project will be designed to meet strict Department of Public Works (DPW) stormwater standards applicable as per City of Cambridge Wastewater and Stormwater Drainage Use Regulations. DPW has provided comment to the Planning Board in memoranda dated February 15, 2017 and March 28, 2017 indicating that the project is expected to meet all DPW standards and recommending additional measures to mitigate and manage flood risk, which have been agreed to by the Applicant. Open space permeability will increase as a result of the development, which will assist in minimizing stormwater run-off from the site. The Applicant has also consulted with the Cambridge Water Department and has proposed improvements to ensure that water service can be provided to the site without adverse impacts on the municipal water system. The project is designed to include water-conserving plumbing features. The project will meet the Green Building Requirements set forth in Section 22.20 of the Zoning Ordinance.

*(19.35) New construction should reinforce and enhance the complex urban aspects of Cambridge as it has developed historically. . . .*

Historically, the area in which the project is proposed has an urban character that is largely inconsistent with Cambridge's citywide development goals. Existing uses are auto-oriented due to their location along Concord Turnpike (State Route 2), with extensive paved area and surface parking. The existing pattern of development is not friendly to pedestrians or bicyclists and not sensitive to its adjacency to a sensitive open space. The proposed project better reinforces the pattern of more recent adjacent residential and commercial development in the neighborhood, which is more sensitive to the adjacent reservation, and aims to encourage pedestrian and bicycle travel with direct pathway connections to the Alewife MBTA station and other existing and planned amenities in the area. The new building's design and use will be harmonious with surrounding buildings along Concord Turnpike.

*(19.36) Expansion of the inventory of housing in the city is encouraged. . . .*

The project consists of residential development with a range of unit types, including three-bedroom units, as encouraged in the planning for the area as well as citywide planning objectives. The project will provide permanently affordable housing units in compliance with the Inclusionary Housing requirements of the Zoning Ordinance.

*(19.37) Enhancement and expansion of open space amenities in the city should be incorporated into new development in the city. . . .*

The project enhances the streetscape along Concord Turnpike with landscaped open space, improving the appearance and amenity of streetscape edges. It also complements the nearby Alewife Reservation, a major open space conservation area, with the addition of vegetated open space, a wet pond, a rain garden, and pedestrian/bicycle pathways at the rear of the buildings. Elevated courtyards and raised decks provide additional open space amenity for the residents, and the new pathways will enhance connections to recreational open space pathways throughout the area. A play area for children will be an added benefit for the residents as there are no public playgrounds in the immediate vicinity.

2. Special Permit for building construction in Flood Plain Overlay District (Section 20.70)

*20.75 Criteria. The Planning Board shall grant a Special Permit for development in the Flood Plain Overlay District if the Board finds that such development has met all of the following criteria in addition to other criteria specified in Section 10.43:*

- 1. No filling or other encroachment shall be allowed in Zone A areas or in the floodway which would impair the ability of these Special Flood Hazard Areas to carry and discharge flood waters, except where such activity is fully offset by stream improvements such as, but not limited to, flood water retention systems as allowed by applicable law.*
- 2. Displacement of water retention capacity at one location shall be replaced in equal volume at another location on the same lot, on an abutting lot in the same ownership, on a noncontiguous lot in the same ownership, or in accordance with the following requirements.*
- 3. All flood water retention systems shall be suitably designed and located so as not to cause any nuisance, hazard, or detriment to the occupants of the site or abutters. The Planning Board may require screening, or landscaping of flood water retention systems to create a safe, healthful, and pleasing environment.*
- 4. The proposed use shall comply in all respects with the provision of the underlying zoning district, provisions of the State Building Code, Wetlands Protection Act, and any other applicable laws.*

5. *Applicants for development in the Alewife area shall be familiar with area-specific and general city-wide land use plans and policy objectives (e.g. Concord-Alewife Plan, A Report of the Concord Alewife Planning Study, November 2005; Toward a Sustainable Future, Cambridge Growth Policy, 1993, Update, 2007; Section 19.30 - Urban Design Objectives of this Zoning Ordinance) and shall demonstrate how their plan meets the spirit and intent of such documents in conjunction with the requirements of this Section 20.70 - Flood Plain Overlay District and Section 20.90 – Alewife Overlay Districts 1-6.*

6. *The requirement of Section 20.74(3) has been met.*

The flood zone certification provided by BSC Group dated January 17, 2017 details how compensatory flood storage will be provided to offset any increase in flood levels for events up to and including a 100-year flood. The proposed project will provide flood water retention in the form of compensatory flood storage on the site, including storage under the building. The flood water retention on the site will provide compensatory flood storage on a foot-by-foot incremental elevation basis, allowing flood waters to flow and recede unrestricted. Thereby, the displacement of existing water retention capacity on the site will be replaced with flood water retention capacity on site. The design will allow floodwater from a 100-year event to flow beneath and around the building without entering the garage or lobby area.

The proposed project will comply with the land use plans and policy objectives of the districts in which it is located, as well as the general land use policies of the City of Cambridge, as set forth in these Findings. The proposed project is not located within the Concord-Alewife Study Area, and the specific regulations of the Alewife Overlay Districts do not apply. Communications from DPW dated February 15, 2017 and March 28, 2017 indicate that the proposed development will have the ability to meet all requirements associated with being located in the Flood Plain and will provide necessary flood plain mitigation to address flood level impacts and building resiliency associated with increased flood elevations presented in the November 2015 Climate Change Vulnerability Assessment. Furthermore, DPW has recommended measures, to which the Applicant has agreed to the extent reflected in this Decision and the Applicant's submissions, to further anticipate and mitigate potential flood risks to the project.

The proposed project will comply with applicable provisions of the Cambridge Zoning Ordinance, as set forth in these Findings, and will comply with the State Building Code. The Conservation Commission granted an Order of Conditions approving the project as proposed and confirming that the project will not impair the ability of the applicable flood hazard areas to carry and discharge flood waters. Based on these reports, the Board finds that the proposal meets the criteria set forth in Section 20.75.

3. Special Permit to waive Ground Floor Area for parking facilities in Flood Plain Overlay District (Section 5.25.42)

*5.25.42 Criteria. Where an above ground parking facility in a structure is proposed to be constructed (a) in the 100-year flood plain, identified as the Zone A flood hazard area (See*

*Section 11.70), or as determined by credible evidence and calculations from a registered professional engineer or (b) on a contaminated site that is listed by the Massachusetts Department of Environmental Protection under the Massachusetts Contingency Plan (310 CMR 40.00) with a Release Tracking Number and has been tier classified, the Planning Board may grant a special permit to waive the limitations of this Section 5.25 so that the parking facility is not subject to the requirements in this Ordinance as to Floor Area Ratio provided only the minimum number of parking spaces required for the uses on the site are provided. In granting such a special permit, the Planning Board shall find the following:*

- 1. Where in a flood hazard area, the construction of a parking facility underground is (a) not technically feasible due to the requirements of the Massachusetts Wetlands Protection Act (M.G.L. ch. 131, s.40, (b) would require construction that would violate requirements or limitations of the Massachusetts Wetlands Protection Act, (c) would, in the view of the Cambridge Conservation Commission, seriously compromise the wetlands protection objectives of the Massachusetts Wetlands Protection Act), and (d) would result in costs of construction that are significantly greater than would otherwise be typical for the location were it not in a flood hazard area;*

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- 3. The above ground facility is designed so as to reduce its actual or perceived bulk through, among other possible techniques, limiting the number of parking spaces it contains, placement of portions of the facility below grade where feasible, or its location relative to actively occupied portions of the construction. Construction above grade is discouraged that would increase the amount of impervious area on the lot.*

According to the Application Documents, the proposed project includes an above-ground parking facility to be constructed entirely within Flood Zone AE as detailed in the Federal Emergency Management Agency Flood Insurance Rate Map Number 25017C0419E dated June 4, 2010. The project proposes establishing less parking than the required minimum for the proposed uses, specifically, 239 parking spaces for a residential project with 320 dwelling units, which is subject to Planning Board review and approval and is discussed further in these Findings. A communication from DPW dated February 15, 2017 indicates that the proposed development will have the ability to meet all requirements associated with being located in the flood plain and will provide necessary flood plain mitigation to address flood level impacts and building resiliency associated with increased flood elevations presented in the November 2015 Climate Change Vulnerability Assessment. The Conservation Commission granted an Order of Conditions approving the project upon identifying the project as an overall improvement to the site and an area with sufficient flood storage compensation, reduction of impervious surface, and creation of open space.

According to the Application Documents, the construction of an underground parking facility would be infeasible given the existing site topography, the requirement to provide compensatory flood storage, and the requirements of the Massachusetts Wetlands Protection Act. The Cambridge Conservation Commission has approved the project as proposed in the Order of Conditions (DEP File Number 123-266) dated November 23, 2016 and recorded on December 6, 2016, and included in the Application Documents.



The Board finds that the design of the parking facility is appropriately integrated into the design of the overall building, with appropriate façade design, planted areas to provide screening, and active building entrances at the ground level to mitigate the appearance of an at-grade parking structure. The building is otherwise consistent with the height limitations in the district, subject to Planning Board approval, and therefore the proposed parking does not adversely affect the overall building scale. Based on these reports and findings, the Board finds that the proposal meets the criteria set forth in Section 5.25.42 to allow an exemption of above-grade parking from GFA calculations.

4. Special Permit to alter the required Green Area Open Space in front yard in Parkway Overlay District (Section 20.63.7)

*20.63.7 The development standards specified in this Section 20.60 shall apply to all development within the Parkway Overlay District not exempted by subsections 20.63.2, 20.63.3, and 20.63.4. Divergence from these standards may be allowed only by issuance of a special permit from the Planning Board as specified in Subsection 10.45. The Board may grant such a permit upon its determination that the development proposed will better serve the objective of this Section 20.60 than if the standards were followed and that the criteria specified in Section 10.43 will be satisfied.*

*20.62 It is the purpose of this Section 11.60 [sic] to augment base zoning regulations in designated areas in order to create unified identifiable images of designated areas, to enhance public safety by reducing visual confusion and haphazard development, to encourage development which will protect and enhance the use and enjoyments of public open space resources .....*

The proposed project diverges from the requirements for front yards set forth in Section 20.64.1 of the Zoning Ordinance, specifically because space within the front yard setback is proposed to be used for some driveway access and surface parking as well as a mechanical equipment pad to serve utility functions, and not solely for green area open space with limited vehicular access and egress as required in 20.64.1. Due to site constraints related to flood plain characteristics and access requirements by the utility provider, the front yard along Concord Turnpike is the only feasible location for electrical equipment. Despite being located in the front yard, the Applicant proposes to attractively screen the equipment with additional landscaping to mitigate its visual impact. Locating the equipment internally to the site may not be feasible, or could require additional vehicular access that would otherwise detract from the objectives of the overlay district. The wider driveways for access, egress, and circulation are meant to provide for improved traffic operation as the site is located off of a state highway (Route 2) and subject to review and approval by MassDOT.

Given that the site has its main frontage and only public access along Route 2, the project is designed in a manner that appropriately meets the objectives of the district as it will protect the open space character along the roadway and will serve as a visual gateway to the city along a major thoroughfare. The proposed front yard treatment aligns with adjacent residential development in the area to create a consistent street edge, and will be designed to

optimize safety for pedestrians, bicycles and motorists. Moreover, the provisions of the base zoning district (Special District 4A) enable developments of this type. Hence, the Board finds that the proposed design, in the context of this site, better serves the Parkway Overlay District objectives of Section 20.60 while also promoting consistency with the base zoning.

5. Special Permit to increase fence height in the Parkway Overlay District (Section 20.65)

*20.63.7 ... The Board may grant such a permit upon its determination that the development proposed will better serve the objective of this Section 20.60 than if the standards were followed and that the criteria specified in Section 10.43 will be satisfied.*

*20.65 Fences. In order to maintain a feeling of openness, to facilitate pedestrian enjoyment and use, and to maximize scenic views, fences along the front and side lot lines shall comply with the following standards:*

- 1. No fence along a front or side lot line and within twenty-five (25) feet of a public right of way shall be more than four (4) feet in height from the curb level of the street or more than thirty (30) percent opaque.*
- 2. Chainlink and wire fences are prohibited.*

The proposed project diverges from the requirements for Fences set forth in Section 20.65.1 of the Zoning Ordinance, because of screening requirements for mechanical equipment as per Section 20.67.1. The electrical equipment, located in the front yard as discussed above in these Findings, is proposed to be screened with a six-foot tall wooden fence planted with vines and shrubs around it. The Board finds that the proposed fence treatment will not impair the pedestrian experience along Concord Turnpike since it will not occupy significant frontage and is meant to shield an otherwise unattractive set of equipment. The site has extensive lot frontage with a vegetated landscape buffer for most of its length. Therefore, with consideration to the Findings above regarding the siting of electrical equipment, the Board finds that the proposed fencing better meets the objectives of the overlay district.

6. Special Permit to site on grade open parking area in front of the building in Parkway Overlay District (Section 20.66.2)

*20.63.7 ... The Board may grant such a permit upon its determination that the development proposed will better serve the objective of this Section 20.60 than if the standards were followed and that the criteria specified in Section 10.43 will be satisfied.*

*20.66.2 Siting of Parking Areas. Parking areas, whether accessory or nonaccessory, shall not be located in the front yard required for any lot in the district. Enclosed parking facilities are encouraged. On grade, open area parking areas shall be located behind the building or buildings served or arranged in such a way as to minimize their visibility from public ways.*

The proposed project diverges from the requirements for siting of parking areas set forth in Section 20.65.1 of the Zoning Ordinance as nine unenclosed parking spaces are proposed in front of one of the buildings. The reason for the parking is to provide some parking spaces near to the building and immediately accessible to vehicles upon entering from the highway. Those spaces are not located within the required front yard setback, being set back over twenty-five (25) feet from the street, and are proposed to be screened with a combination of raised planting beds and a low wood fence with an integral arbor feature. The vast majority of parking spaces are enclosed in the building, and some additional on-grade parking is located internally to the site. Importantly, parking is not located on the south side of the site in order to prioritize open space where pedestrians and bicyclists are more likely to be accessing the buildings.

As a result of the proposed location and screening of surface parking at the front of the site, the Board finds that the parking area will not have a negative visual impact on the Concord Turnpike frontage of the site. Considering this screening and taking into account other site planning considerations, the Board finds that the proposed parking arrangement better serves the objectives of the district given the particular conditions of the site.

7. Special Permit to locate mechanical equipment in the front yard in Parkway Overlay District (Section 20.67)

*20.63.7 ... The Board may grant such a permit upon its determination that the development proposed will better serve the objective of this Section 20.60 than if the standards were followed and that the criteria specified in Section 10.43 will be satisfied.*

*20.67 Mechanical Equipment and Refuse Storage Areas.*

- 1. No refuse storage areas nor mechanical equipment areas shall be located in a front yard within the district. Such areas shall be screened from view from street and parking areas, residential districts, open space areas, and designated parkways by a six (6) foot high durable nonliving barrier (or earth berm) planted with at least one shrub or vine for each ten (10) feet of barrier towards the abutting property.*
- 2. Mechanical equipment on the roof of any building shall be permanently screened from view from the ground or other buildings in the area.*

The proposed project diverges from the requirements for siting Mechanical Equipment set forth in Section 20.67.1 of the Zoning Ordinance owing to the proposed location of the electrical equipment in the front yard in front of one of the buildings, which is discussed earlier in these Findings. The electrical equipment, which has to be located along Concord Turnpike owing to the flood plain site characteristics and requirements for accessibility by the utility provider, is proposed to be screened with a six feet tall wooden fence with vines and planted with shrubs around it. As discussed earlier in these Findings, the Board finds that the fence and row of trees on both sides of the equipment area will sufficiently screen the

equipment from Concord Turnpike, and that considering the conditions of the site, the proposed design approach better serves the objectives of the overlay district.

8. Special Permit for reduction of required parking (Section 6.35.1)

*6.35.1 Reduction of Required Parking. Any minimum required amount of parking may be reduced only upon issuance of a special permit from the Board of Zoning Appeals. A special permit shall be granted only if the Board determines and cites evidence in its decision that the lesser amount of parking will not cause excessive congestion, endanger public safety, substantially reduce parking availability for other uses or otherwise adversely impact the neighborhood, or that such lesser amount of parking will provide positive environmental or other benefits to the users of the lot and the neighborhood, including specifically, among other benefits, assisting in the provision of affordable housing units. ...*

The proposed project seeks approval to reduce the required amount of accessory parking. The basis for the requested reduction is that the location of the site near the MBTA Alewife Station, as well as connections to multiple bike paths including Minuteman Commuter Bikeway, offer good access to alternative transportation modes. The current proposal to reduce parking for the proposed development is consistent with the city-wide goals to discourage driving and encourage other modes of transportation, and serves to reduce auto trip generation and thereby mitigate potential traffic impacts, as discussed earlier in these Findings. The project is seeking approval for 239 parking spaces (reduced slightly from an initial proposal of 243 in response to Planning Board comments) for 320 residential units, with all parking to be accommodated above-grade, 200 spaces in garages and 39 surface spaces. Such relief is allowed by special permit pursuant to Section 6.35.1 and Section 10.45, which allows the Planning Board to grant special permits otherwise within the purview of the Board of Zoning Appeal for projects that are also subject to Planning Board special permit approval.

In its memo dated February 16, 2017, TP&T expressed support for the requested reduction in required parking as the proposed parking ratio of approximately 0.75 spaces per unit is consistent with the observed peak parking demand in the adjacent residential development, which is comparable to the proposed project. The Applicant has also committed to provide carsharing spaces, transit and Hubway membership subsidies, and access to shuttle services, to the extent reflected in this Decision and the Applicant's submissions, which will further encourage residents to become less dependent on personal car ownership. Moreover, there is no public on-street parking in the area that could be impacted. Hence, the Board finds that there will be minimum impact on availability of parking and no other adverse impacts on the neighborhood. The Board also finds that the reduction in parking will be reasonable in light of the considerations set forth below.

*... In making such a determination the Board shall also consider whether or not less off street parking is reasonable in light of the following:*

- (1) The availability of surplus off street parking in the vicinity of the use being served and/or the proximity of an MBTA transit station.*

The project is within an area served by the MBTA Alewife Red Line Station and multiple MBTA bus route stops serving Cambridge and surrounding towns.

- (2) The availability of public or commercial parking facilities in the vicinity of the use being served provided the requirements of Section 6.23 are satisfied.*

The MBTA Alewife Station parking garage is the closest public parking facility, which is not expected to be an alternative, though it may be an option for visitors on a short-term basis.

- (3) Shared use of off street parking spaces serving other uses having peak user demands at different times, provided that no more than seventy-five (75) percent of the lesser minimum parking requirements for each use shall be satisfied with such shared spaces and that the requirements of Subsection 6.23 are satisfied.*

Shared use of off street parking spaces serving other uses has not been proposed; however, carsharing services will be made available.

- (4) Age or other occupancy restrictions which are likely to result in a lower level of auto usage; and*

No such restrictions exist; however, the reduction in parking anticipates a less auto-dependent future for the area as the Applicant has shown that residents in this particular area tend to prefer transit or other modes of commuting.

- (5) Impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, significant negative impact on the historic resources on the lot, impairment of the urban design objectives of the city as set forth in Section 19.30 of the Zoning Ordinance, or loss of pedestrian amenities along public ways.*

The reduction in parking is preferable because it promotes efficient use of the existing transit options and prevents the need to build additional parking on the site, which positively impacts the urban design of the area.

- (6) The provision of required parking for developments containing affordable housing units, and especially for developments employing the increased FAR and Dwelling unit density provisions of Section 11.200, will increase the cost of the development, will require variance relief from other zoning requirements applicable to the development because of limitations of space on the lot, or will significantly diminish the environmental quality for all residents of the development.*

The project includes affordable housing utilizing the increased FAR and dwelling unit density provisions. Providing parking compliant with zoning requirements will impact the environmental quality as the site is located on a flood plain with limited opportunities for below grade parking.

9. Special Permit to exceed allowed curb cut width (Section 6.43.5)

The proposed project seeks approval for two curb cuts with width slightly larger than 30 feet along Route 2. The maximum allowed curb cut width is 30 feet per zoning regulations. Such relief is allowed by special permit in Section 6.43.5 and Section 10.45 of the Zoning Ordinance.

*6.43.5 The Board of Zoning Appeal may grant a special permit modifying the provisions of this subsections 6.43 in accordance with the following conditions: . . .*

*(b) The maximum curb cut width specified in paragraphs 6.43.3 (a) and 6.43.3 (b) may be modified if the Board determines that an increased curb cut width would facilitate traffic and safety.*

In its memo dated February 16, 2017, TP&T noted that the proposed driveways with separate entry and exit are reasonable. The wider driveways for access and egress ensure better traffic safety as the site is located off of Route 2 and subject to review and approval by MassDOT. Therefore, the Board finds that the larger curb cut for this proposed development meets the applicable criteria.

10. Special Permit to increase building height in Special District 4A (Section 17.42.3)

*17.42.3 Maximum Height. The maximum height in the Districts shall be sixty (60) feet except that it may be increased to eight-five (85) feet for nonresidential uses and ninety (90) for residential uses, by special permit from the Planning Board. The special permit shall be granted where the applicant demonstrates to the satisfaction of the Board that the additional height will better serve the objectives of this Section 17.40 to increase the amount of open space in the district and to limit the extent to which building and other hard surfaces cover the ground.*

The Board finds that an increase to a maximum height of 69 feet, as illustrated in the Application Documents, will not result in any detriment to the project or to abutting uses. The proposed height is not substantially greater than the as-of-right limit and is consistent with other development in the area, contributing to a more cohesive urban character. The project includes various open spaces throughout the site including a landscaped front yard setback (consistent with the Parkway Overlay District objectives), more park-like spaces to the south serving pedestrians and bicyclists near building entrances, and raised courtyards and decks to provide open space for building residents. The project is designed in accordance with the citywide urban design objectives, as discussed earlier in these Findings. Therefore,

the Board finds that the proposed project, as designed, serves the objectives of Section 17.40 by increasing the amount of open space and minimizing the amount of impervious surfaces on the lot, as well as other applicable objectives.

11. Special Permit to reduce yard requirements in Special District 4A (Section 17.42.2)

*17.42.2 Yard Requirements. The minimum yards required in the Districts may be waived by the Planning Board by Special Permit. In no case, however, shall the front yard required in the Parkway Overlay District, Section 11.60 [sic], be waived.*

*20.64.1 Front Yards. Front yards should be of sufficient size and appropriately landscaped so as to increase public safety and to positively contribute to the visual and environmental quality of the district. Therefore the following standards shall apply:*

- 1. The minimum front yard setback for the principal front wall for any structure shall be twenty-five (25) feet measured from the street line...*

The Board finds that it is appropriate to grant the requested waiver of yard setback requirements, as set forth below.

The required yard setbacks in Special District 4A are the same as the requirements of the Office 2 District, which calculates the required yard setbacks by formula depending on the height and façade length of a given side of the building. The project proposes a minimum 25-foot front yard setback, 10-foot west and east side yard setbacks, and 21-foot rear yard setback per the plans submitted with the Application Documents, which are less than the yard setbacks that would be required by the application of the base district formula but consistent with the minimum numerical setbacks required by the district.

As discussed earlier in these Findings, the Board has found the proposed design to be consistent with the intent of Special District 4A, the Parkway Overlay District, and the citywide urban design objectives, with consideration to the particular conditions of the site. The project will provide adequate flood water retention, as described further above in these Findings, and will not have an adverse impact on abutters. The proposed front yard conforms to the minimum 25-foot setback requirement in the Parkway Overlay District. Therefore, the Board finds it is appropriate to allow a waiver of the formula yard requirements in favor of the yard setbacks as proposed.

12. General Criteria for Issuance of a Special Permit (Section 10.43)

The Planning Board finds that the project meets the General Criteria for Issuance of a Special Permit, as set forth below.

*10.43 Criteria. Special permits will normally be granted where specific provisions of this Ordinance are met, except when particulars of the location or use, not generally true of the*

*district or of the uses permitted in it, would cause granting of such permit to be to the detriment of the public interest because:*

- (a) It appears that requirements of this Ordinance cannot or will not be met, or ...*

Upon granting of the requested special permits, it appears that the requirements of the Ordinance will be met.

- (b) traffic generated or patterns of access or egress would cause congestion, hazard, or substantial change in established neighborhood character, or ...*

As discussed earlier in these Findings, based on a review of the certified Transportation Impact Study and with consideration of the proposed mitigation and other applicable requirements, the traffic generated will not create any new congestion, hazard, or change in neighborhood character. Patterns of access and egress have been designed in consultation with TP&T and are subject to the approval of the Massachusetts Department of Transportation.

- (c) the continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would be adversely affected by the nature of the proposed use, or ...*

The proposed residential use conforms to the allowed uses in this district, and hence will not adversely affect adjacent uses that exist or are anticipated in the future. The proposed project will be compatible with the use and scale of surrounding lots, will improve the streetscape with landscape improvements, and will minimize impacts on adjacent protected open space.

- (d) nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the City, or ...*

The proposed housing use will not create nuisance or hazard, and all development activity will adhere to applicable health and safety regulations.

- (e) for other reasons, the proposed use would impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this Ordinance, and ...*

The proposed use is encouraged by City plans for the area and the Zoning Ordinance. The zoning for the district is specifically intended to facilitate a transition to more compact, mixed-use development with a reduction in surface parking and enhanced landscaping near sensitive environmental areas. The proposed multifamily dwellings, which are allowed in the district, will complement nearby residential uses and supplement adjacent hotel and office development to enhance the overall mix of uses. Therefore, the proposed residential development fits this existing and anticipated pattern of development in addition to enhancing the integrity of the district.



*(f) the new use or building construction is inconsistent with the Urban Design Objectives set forth in Section 19.30.*

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The Board finds the project to be consistent with the citywide urban design objectives, as set forth above in these Findings.

## DECISION

Based on a review of the Application Documents, testimony given at the public hearings, and the above Findings, the Planning Board hereby GRANTS the requested Special Permits subject to the following conditions and limitations. Hereinafter, for purposes of this Decision, the Permittee shall mean the Applicant for the requested Special Permits and any successor or successors in interest.

1. All use, building construction, and site plan development shall be in substantial conformance with the Application Documents and other supporting materials submitted to the Planning Board by the Applicant, and the additional Conditions of this Special Permit Decision. The project plans hereby approved by the Planning Board are those dated 1/17/2017 with revisions through 3/21/2017. Appendix I summarizes the dimensional features of the project as approved.
2. The project shall be subject to continuing design review by the Community Development Department ("CDD"). Before issuance of each Building Permit for the project, CDD shall certify to the Superintendent of Buildings that the final plans submitted to secure the Building Permit are consistent with and meet all conditions of this Decision. As part of CDD's administrative review of the project, and prior to any certification to the Superintendent of Buildings, CDD may present any design changes made subsequent to this Decision to the Planning Board for its review and comment.
3. The Permittee shall address the following design comments through the continuing design review process set forth above. Each of the below items shall be subject to CDD review and approval of the final design details:
  - a. Review of floor plans to ensure accurate correlation with changes shown in the elevations.
  - b. Review of all proposed public realm, open space and streetscape improvements, including a more specific landscaping plan identifying plant species.
  - c. Review of final selection of landscape materials and outdoor furniture.
  - d. Review of site design details, including play area, screening of the at-grade parking area, electrical equipment and utilities, final sidewalk and pathway locations and design treatments.
  - e. Review of all exterior materials, colors, and details.
  - f. Review and refinement of first floor façade treatments, particularly where visible from publicly accessible areas.
  - g. Review of parking, bicycle parking, access and egress by the Traffic, Parking and Transportation Department (TP&T).
  - h. Review and approval by the City of the final design of the pedestrian and bicycle connection to Discovery Park including location, width, pavement material, lighting, and maintenance, and evidence of an easement or other legal means of providing pedestrian and bicycle access to the abutting Discovery Park site, to include a

maintenance agreement addressing matters including but not limited to snow and ice clearance in winter, all of which are contingent upon agreement by the abutting property owner.

- i. Review of stormwater management by the Department of Public Works (DPW).
4. The following transportation impact mitigation measures shall be completed prior to issuance of a building permit for the uses authorized by this special permit:
    - a. Contribute \$25,000 to the City toward funding a public bicycle sharing station as part of the regional bicycle sharing system in the Alewife area. The final location of the station will be determined by the City and will provide another mobility option for residents, visitors, and retail employees and patrons.
    - b. Contribute \$25,000 to the City toward a study of a dedicated bus/HOV lane or queue lane for the Route 2 access ramp into the Alewife Station at Steel Place.
    - c. Contribute \$75,000 to the City toward furthering the feasibility study and design for the Alewife bicycle and pedestrian bridge and commuter rail station. The amount is based on the number of units and contributions by other development projects in the Alewife area with a 50% reduction in the amount since the development will not be located in Alewife Quadrangle or Triangle areas.
  5. The following transportation impact mitigation measures shall be completed prior to issuance of a certificate of occupancy for the uses authorized by this special permit:
    - a. Pave the multiuse pathway between Discovery Park and the Alewife MBTA station, subject to approvals by others as needed, including the state Department of Conservation and Recreation (DCR) and the Cambridge Conservation Commission. In the event that necessary approvals to pave this path are not granted, the Permittee shall contribute \$75,000 to the City to benefit transportation conditions in the Alewife area, to be used in a manner determined by the City.
    - b. Relocate the MBTA's variable message sign, transformer and communication cable located in the sidewalk along the site frontage, as requested by MassDOT and subject to all applicable government approvals.
    - c. Demolish the existing MBTA bus shelter located just east of the site and restoration of the area, as requested by MassDOT and subject to all applicable government approvals.
  6. The Permittee shall be required to implement the following TDM measures to encourage residents to choose preferred modes of transportation, including transit, bicycling and walking over traveling by single-occupancy vehicles:
    - a. Provide at least two carsharing parking spaces on-site, if desired by a local carsharing organization. Carsharing vehicles shall be available for use by the general public as well as the residents.
    - b. To establish the habit of using mass transit, offer each adult member of each household (up to 2) upon move-in a Charlie Card valued at the cost of 50% of a

Monthly MBTA LinkPass (currently \$84.50/month, but subject to fare increases) for 3 consecutive months. This requirement renews each time a new household moves in to incentivize new households to use public transit.

- c. Join the Alewife Transportation Management Association (TMA) to provide benefits to residents including, but not limited to, access to shuttle buses to/from the Alewife MBTA station, such as provided by the Alewife TMA or a comparable shuttle service such as the Route 128 Business Council, Vox on Two shuttle, and Discovery Park shuttle. Joining the existing Vox on Two shuttle bus that currently provides peak-hour round trip service to Alewife Station may be ideal since it is already operational. The shuttle service shall also be provided for residents to the nearby local area shopping centers free of charge with stops that include both the Alewife Brook Parkway Shopping Center and Fresh Pond Mall with a minimum of two round trips per week. Based on the demand observed through resident requests, ridership, and the transportation monitoring and reporting program, the service frequency may be increased in the future.
- d. Install a real-time multimodal transportation display screen to help people decide which mode to choose for each trip and/or post materials at a transportation information center located in an area that is central, visible, convenient, and equally accessible to all residents and visitors. The center will feature information on:
  - i. Available pedestrian and bicycle facilities in the vicinity of the Project site.
  - ii. MBTA maps, schedules, and fares.
  - iii. Area shuttle map and schedule, if one exists.
  - iv. "Getting Around in Cambridge" map (available at the Cambridge Community Development Department office).
  - v. Location of bicycle parking.
  - vi. Hubway regional bikeshare system
  - vii. Carsharing/Ride-matching programs.
  - viii. Other pertinent transportation information.
- e. Designate a transportation coordinator (TC) for the site to manage the TDM program and coordinate with the TMA. The TC will also oversee the marketing and promotion of transportation options to all residents at the site in a variety of ways:
  - i. Posting information in a prominent location in the building and on the Project's website, social media, and property newsletters.
  - ii. Overseeing the monitoring and reporting requirements of the monitoring program.
  - iii. Being on-site during a minimum of 2 hours per week and responding to individual requests for information in person and via phone and email. Email and phone information for the TC will be posted in the transportation information center.

- iv. Participating in any TC trainings offered by the City of Cambridge or local TMA.
  - v. Compiling and distributing up-to-date information explaining all transportation options to all new residents as part of their New Resident Packet. The packets will contain information on both the range of options available and any building manager programs to support the use of these options. New Resident Packets will also contain information about the Charlie Card offer at a 50% discount of a monthly LinkPass for three months to each adult member of a new household.
  - f. Provide a minimum of 1 electric vehicle charging station serving two designated parking spaces.
  - g. Provide 20 complimentary bikes for residents to use.
  - h. Provide bike repair areas, including air pumps and other bike repair tools, in the bicycle storage areas.
  - i. Consider providing automatic power assist doors to enter/exit the bicycle room for the convenience of the bicyclists, to be reviewed by TP&T through the continuing design review of bicycle parking areas.
  - j. Do not charge residents additional fees for bicycle parking.
  - k. Charge fees for automobile parking separately from the rent to remind residents of the cost of owning a vehicle.
7. The Permittee shall implement a monitoring program to include annual monitoring of mode split, counts of parking space utilization, and auto ownership. All surveys and counts shall be designed and conducted in a manner approved by CDD before issuance of the first certificate of occupancy. Monitoring and surveying shall begin when the occupancy of the Project has reached ninety percent (90%) or within one year of the date of the first certificate of occupancy, whichever is sooner. If the certificate of occupancy is issued between September 1<sup>st</sup> and February 29<sup>th</sup>, the monitoring should take place during the months of September or October and be reported to the City no later than November 30<sup>th</sup>. If the certificate of occupancy is issued between March 1<sup>st</sup> and August 31<sup>st</sup>, monitoring should take place during the months of April or May and be reported to the City no later than June 30<sup>th</sup>.
8. The Permittee shall meet the following standards for building design in order to mitigate flood risk, subject to continuing review and approval by DPW:
- a. The first floor elevation shall be approximately one foot above the anticipated 2030 100-year flood elevation, as shown the approved plans.
  - b. All residential units shall be located on the second floor and higher, significantly above the 2070 1% flood elevation.
  - c. All areas of the buildings located below 2070 1% flood elevation shall be designed to recover from the 2070 1% flood event. The building materials shall maximize the use of non-porous materials and shall be mold and mildew resistant.

- d. All interior building mechanical rooms shall be water proofed to resist damage due to potential inundation during more significant flooding events.
  - e. The Permittee shall coordinate with the electrical utility provider to evaluate options for elevating or waterproofing the exterior site electrical infrastructure.
  - f. All residential units shall have operable windows.
9. The Permittee shall develop a site Action Plan to allow for future building adaptation to flooding risks associated with climate change, with an emphasis on providing safety and comfort to the residents. The plan shall be reviewed and approved by DPW and the Cambridge Fire Department prior to issuance of a building permit through the continuing review process.
- a. The Action Plan shall be reviewed by the Permittee and property management team every five years through 2070 to confirm the effectiveness of existing adaptation measures and the need for additional measures. These reviews shall be documented and submitted to DPW and the Fire Department.
  - b. The Action Plan shall include a notification regarding flooding risks that shall be included in the leases to ensure residents are informed of the flood risk. This plan shall be operational immediately upon occupancy of the building.
  - c. The Action Plan shall include a resident notification / evacuation plan. This plan shall be operational immediately upon occupancy of the building.
  - d. The Action Plan shall provide information, guidance, and resources to assist residents sheltering in place, such as a disaster supply kit. This plan shall be operational immediately upon occupancy of the building.
  - e. The Action Plan shall identify emergency evacuation meeting points on an elevated courtyard in each building and develop evacuation routes for residents and access points for the Fire Department. This plan shall be operational immediately upon occupancy of the building.
  - f. The Action Plan shall detail an operations plan for sand bags / inflatable barriers on site to reduce flooding risks. This plan shall be operational immediately upon occupancy of the building.
  - g. The Action Plan shall address the operation of the fire detection and suppression systems to ensure that they remain operable during flood events or loss of power. This plan shall be operational immediately upon occupancy of the building.
  - h. The Action Plan shall address elevator operation and heated community space in each building in the event of loss of power. This plan shall be operational immediately upon occupancy of the building.
  - i. The Action Plan shall identify appropriate public spaces in each building to locate key emergency medical supplies and other emergency response supplies. This plan shall be operational immediately upon occupancy of the building.

- j. The Action Plan shall include a notification protocol to be utilized in the event of a flooding or other natural disaster. This plan shall be operational immediately upon occupancy of the building.
  - k. The Action Plan shall detail future adaptation measures that can be implemented at the site to reduce flooding risks.
  - l. The Action Plan shall detail the design of the entrances to the parking garages to facilitate future flood control gate installation to protect the garages from flooding in the future.
10. The Permittee shall be required to prepare and implement a Construction Management Program in accordance with Section 18.20 of the Zoning Ordinance, which shall be reviewed and certified by the DPW and the Cambridge Public Health Department prior to issuance of a Building Permit for development authorized by this Special Permit. Such a program shall include, in addition to the specific items required by Section 18.20, a plan for site remediation in accordance with applicable local, state and federal requirements.
11. All authorized development shall abide by all applicable City of Cambridge Ordinances, including the Noise Ordinance (Chapter 8.16 of the City Municipal Code).
12. Throughout design development and construction, the project shall conform to the Green Building Requirements set forth in Section 22.20 of the Cambridge Zoning Ordinance. CDD shall certify that the applicable requirements are met prior to issuance of a building permit, and again prior to issuance of a certificate of occupancy, for development authorized by this special permit.
13. Prior to the final selection of colors and textures for façade materials, the Permittee shall erect a mock-up(s) of an exterior wall section, including rooftop screening elements, on or near the building site to be reviewed by CDD for comment. Members of the Planning Board shall be notified when the mock-up is erected and given an opportunity to view the materials and transmit any comments to CDD.

Voting in the affirmative to approve the requested special permits were Planning Board Members Louis Bacci, Jr., Steven Cohen, Catherine Preston Connolly, Tom Sieniewicz, Hugh Russell, and Associate Members Ahmed Nur and Thacher Tiffany, appointed by the Vice Chair to act on this case, constituting at least two thirds of the members of the Board, necessary to grant a special permit.

For the Planning Board,

A handwritten signature in cursive script, reading "Catherine Preston Connolly".

Catherine Preston Connolly, Vice Chair.

A copy of this decision PB-326 shall be filed with the Office of the City Clerk. Appeals, if any, shall be made pursuant to Section 17, Chapter 40A, Massachusetts General Laws, and shall be filed within twenty (20) days after the date of such filing in the Office of the City Clerk.



ATTEST: A true and correct copy of the above decision filed with the Office of the City Clerk on May 3, 2017, by Swaathi Joseph, authorized representative of the Cambridge Planning Board. All plans referred to in the decision have been filed with the City Clerk on said date.

Twenty (20) days have elapsed since the filing of the decision. No appeal has been filed.

DATE:

City Clerk of Cambridge

**Appendix I: Approved Dimensional Chart**

	Existing	Allowed or Required	Proposed	Permitted
Lot Area (sq ft)	166,468	5,000	No Change	No Change
Lot Width (ft)	592.73	50	No Change	No Change
Total GFA (sq ft)	71,374	324,612	324,440	324,440
Residential Base	n/a	249,702	249,702	Consistent with Application Documents
Non-Residential Base	71,374	189,774	n/a	
Inclusionary Bonus	n/a	74,910	74,738	
Total FAR	0.43	1.95	1.95	Consistent with Application Documents
Residential Base	n/a	1.5	1.5	
Non-Residential Base	0.43	1.14	n/a	
Inclusionary Bonus	n/a	0.45	0.45	
Total Dwelling Units	0	361	320	320
Base Units	n/a	277	246	Consistent with Application Documents
Inclusionary Bonus Units	n/a	84	74	
Base Lot Area / Unit (sq ft)	n/a	600	600	
Total Lot Area / Unit (sq ft)	n/a	461	520	
Height (ft)	n/a	55/85 <sup>1</sup> & 90 <sup>2</sup>	55/69 & 69	Consistent with Application Documents
Front Setbacks (ft)	n/a	(H+L)/4 <sup>3</sup> ; min 25	25 <sup>4</sup>	
Side Setback (ft)	n/a	(H+L)/5 <sup>3</sup>	10 <sup>4</sup>	
Side Setback (ft)	n/a	(H+L)/5 <sup>3</sup>	10 <sup>4</sup>	
Rear Setback (ft)	n/a	(H+L)/4 <sup>3</sup> ; min 20	21 <sup>4</sup>	
Open Space (% of Lot Area)	n/a	15	> 47	Consistent with Application Documents
Private Open Space	n/a	15	> 15	
Permeable Open Space	n/a	n/a	> 29	
Off-Street Parking Spaces	n/a	320	239	239
Long-Term Bicycle Parking	n/a	335	336	Consistent with Application Documents
Short-Term Bicycle Parking	n/a	32	38	
Loading Bays	n/a	n/a	0	

<sup>1</sup> In Parkway Overlay District as per Section 20.64.2.

<sup>2</sup> For residential uses exceeding 60 feet in SD 4A with Planning Board Special Permit as per Section 17.42.3.

<sup>3</sup> Minimum yard setback in Office 2 zone, which is greater than the proposed setbacks.

<sup>4</sup> With Planning Board Special Permit to waive yard requirements as per Section 17.42.2.



## Town of Arlington, Massachusetts

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### Central School Lease of Space: Arlington Center for the Arts

#### Summary:

7:45-8:00p.m.

- *Board will discuss lease details.*

#### ATTACHMENTS:

Type	File Name	Description
Reference Material	Draft_Lease_ARB_and_ACA_051217.pdf	Draft Lease ARB and ACA dated May 12, 2017

**ARLINGTON REDEVELOPMENT BOARD &  
ARLINGTON CENTER FOR THE ARTS, INC.**

**CENTRAL SCHOOL BUILDING LEASE**

**Commencement Date: September 1, 2017**

**Date Executed: TBD**

**ARLINGTON REDEVELOPMENT BOARD &  
ARLINGTON CENTER FOR THE ARTS, INC.**

**CENTRAL SCHOOL BUILDING LEASE**

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**ARLINGTON REDEVELOPMENT BOARD &  
ARLINGTON CENTER FOR THE ARTS**

AGREEMENT OF LEASE, executed as of the \_\_\_\_ day of \_\_\_\_\_, 2017,  
by and between the ARLINGTON REDEVELOPMENT BOARD (hereinafter referred to as the  
Landlord) and the ARLINGTON CENTER FOR THE ARTS, (hereinafter referred to as the Tenant).

WITNESSETH THAT:

**SECTION 1. DEFINITIONS AND DATA**

(a) Each reference in this Lease to the following terms shall be construed to  
incorporate the following respective definitions and data:

Additional Rent: Any amounts prescribed in this Lease to be paid by Tenant to Landlord,  
other than the Annual Rent or Operating Expenses.

Annual Rent: See Section 6 below.

Area of Building: It is agreed that the area of the Building is 30,529 square feet, more or  
less.

Area of Tenant's Portion of Building: It is agreed that the area of the Tenant's portion of  
the Building is 7,700 square feet, more or less, or portion thereof.

Building: The building known as the Central School Building, situated on the Land as  
defined below, and containing 30,529 square feet, more or less.

Business Days: All days except Sundays, Saturdays, days established as "Legal Holidays"  
on which state offices are closed and such other days that the Tenant presently or in the future  
recognizes as holidays for the Tenant's general office staff.

Capital Contribution: Annual payment made to the Town to defray costs associated with  
maintaining the building.

Capital Improvement: Any item that is available to, controlled by, or acquired by the  
Town, has a useful life of at least five years, and has a purchase cost of at least \$5,000.

Commencement Date: The date on which the initial lease term commences, being  
September 1, 2017.

Demised Premises: That portion of the Building containing 7,700 square feet, more or

less, or portion thereof plus the Land as defined below, located at 20 Academy Street, Arlington, Middlesex County, Massachusetts; the portion of the Building consists of office space as marked "Third Floor Space" and "Fourth Floor Space" on a plan attached hereto and made a part hereof.

Designated Tenant: The single tenant billed and responsible for paying for all Operating Expenses that cannot be billed separately to each tenant.

Execution Date: The date on which this Lease is executed.

Fiscal Year (FY): The Town's fiscal year, from July 1 through June 30.

Landlord: The landlord named herein, or any subsequent owner or lessee, from time to time, of the Landlord's interest in the Demised Premises.

Landlord's Original Address: Arlington Redevelopment Board c/o Planning and Community Development Department, 730 Massachusetts Avenue, Arlington, Massachusetts 02476.

Lease: This Agreement of Lease and the Schedules and Exhibits, if any, annexed hereto, which are made a part hereof.

Mortgage: A mortgage, deed of trust, trust indenture, or other security instrument of record creating an interest in, or affecting title to, the Land or Demised Premises, or any part thereof, including a lease-hold mortgage, and any and all renewals, modifications, consolidations, or extensions of any such instrument.

Mortgagee: A person, firm, corporation, or other entity holding any Mortgage.

Operating Expenses: See Section 9 below.

Security Deposit: See Section 5 below.

Taking: A taking of property or any interest therein, or right appurtenant or accruing thereto, by condemnation or eminent domain, or by action, proceedings, or agreement in lieu thereof, pursuant to governmental authority.

Tenant: The tenant named herein, or any subsequent assignee under Section 31 below.

Tenant's Original Address:

Term, or Term of this Lease: Commencing on the Commencement Date (September 1,

2017) and expiring at 11:59 P.M. on [December 31, 2028] ("Original Expiration Date"), unless such Term shall sooner terminate, or be extended, pursuant to the provisions of this Lease.

Unavoidable Delays: Delays due to strikes; lock-outs; labor disputes; acts of God; inability to obtain labor or materials; governmental restrictions; emergency acts; orders or regulations of any governmental authority, including without limitation restrictions, acts, orders or regulations aimed at conserving energy; civil commotion; unavoidable casualty; or other causes beyond the reasonable control of the Landlord or the Tenant, as the case may be, whether or not similar in nature to the causes hereinbefore enumerated.

DRAFT

## **SECTION 2. DEMISED PREMISES; TERM OF LEASE**

(a) The Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord certain space within the Building, containing 7,700 square feet, more or less, plus the non-exclusive right to use the Premises as defined above (hereinafter referred to as the Demised Premises), located at 20 Academy Street, Arlington, Middlesex County, Massachusetts; said certain space consists of office space as marked "Third Floor Space" or "Fourth Floor Space" on the plan attached hereto and made a part hereof.

(b) To have and to hold the Demised Premises, subject to the agreements, terms, and conditions herein contained, for the Term of this Lease as defined in Section 1 above (being September 1, 2017 through December 31, 2028).

(c) The Landlord designates twenty (20) parking spaces at the Central School Building for dedicated parking to the Tenant for use during the Term of this Lease. Such spaces shall have a sign to be fabricated and installed by Tenant indicating sole use by the Tenant.

## **SECTION 3. COMMENCEMENT DATE; INABILITY TO GIVE POSSESSION**

(a) The Commencement Date of the Term of this Lease shall be September 1, 2017. If the Landlord shall be unable, in the exercise of all reasonable efforts, to give possession of the Demised Premises on the Commencement Date for any reason, including without limitation a previous tenant's failure to vacate the Demised Premises, or to release its rights to the Demised Premises on time, the Landlord shall not be subject to any liability therefor. Under such circumstances, the annual rent to be paid herein shall not commence until the Demised Premises are available for occupancy, and no such failure to give possession on the Commencement Date shall in any way affect the validity of this Lease or the obligations of the Tenant hereunder, nor shall same be construed in any way to extend the Term of this Lease or change the Commencement Date.

## **SECTION 4. OFFER TO EXTEND**

(a) If this Lease has not been terminated prior to the Original Expiration Date, then the Landlord shall have the option to extend the initial term. When considering the option to extend, the Landlord shall consider: Landlord that the Tenant is exercising its Option to Extend by [April 30, 2027].

- (i) whether the Tenant agrees to extend; and,
- (ii) whether the Tenant is in default hereunder at the time of the offer to extend; and,
- (iii) whether the Tenant is in default hereunder at the time the Term would expire but for such extension; and,
- (iv) whether the Landlord and the Tenant can agree on the Capital Contribution for such Extension Period.

(b) If the Landlord and the Tenant fail to extend, the Term shall expire at the end of the then current Term. The Landlord shall exercise the Option to Extend by giving written notice to the Tenant of the exercise of the option by March 31, 2026. Should the Tenant elect not to extend, written notice of such election shall be provided to the Landlord by April 30, 2026. During the Extension Period all provisions of this Lease shall apply, except that the Landlord and Tenant shall negotiate the Capital Contribution rate for the Extension Period.

#### **Section 5. SECURITY DEPOSIT**

(a) The Tenant shall pay the Landlord the sum of one month's rent or designate an equivalent amount held by Landlord free of any claim as the "Security Deposit," to be held without interest as security for the payment of ANNUAL RENT, Additional Rent and any other items due hereunder and for the performance and observance of all the agreements and conditions in this Lease to be performed and observed on the part of the Tenant. In the event of any default or defaults in any such payment, performance or observance, the Landlord may apply the Security Deposit or any part thereof towards the curing of any such default or defaults and/or towards compensating the Landlord for loss or damage arising from any such default or defaults, without prejudice to any other remedy or remedies which the Landlord may have, or the Landlord may pursue any other remedy or remedies in lieu of applying the Security Deposit or part thereof. If the Landlord shall apply the Security Deposit or any part thereof as aforesaid, the Tenant shall upon demand pay to the Landlord the amount so applied by the Landlord to restore the Security Deposit to its original amount. At the expiration or other termination of this Lease and upon delivery of possession of the Demised Premises to the Landlord, if the Tenant shall not then be in default or otherwise liable to the Landlord hereunder, the Security Deposit, or the unapplied balance thereof then held by the Landlord, shall be returned to the Tenant without interest.

In the event of a sale of the Demised Premises, the Landlord shall either transfer the Security Deposit to the purchaser or lessee or shall return the same to the Tenant, and upon such transfer of the Security Deposit to the purchaser or lessee or such return of the same to the Tenant, the Landlord shall thereupon be released by the Tenant from all liability for the return of the Security Deposit; and if the Security Deposit is transferred to the purchaser or lessee, the Tenant agrees to look solely to such party for the return of the Security Deposit. It is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security Deposit to a purchaser or lessee.

#### **SECTION 6. ANNUAL RENT PAYMENT TERMS**

(a) From and after the Rent Commencement Date, the Tenant shall pay, without any set-off or deduction, the initial ANNUAL RENT and subsequent ANNUAL RENTs to the Landlord at the Landlord's Original Address, or to such other person or entity, or at such other place as the Landlord may designate by notice to the Tenant. Said Rents shall be paid in equal monthly installments in advance of or before the first day of each calendar month during the Term of

this Lease, and shall be apportioned for any fractional month in which the Rent Commencement Date or the last day of the Term of this Lease may fall, except that upon the signing of this Lease by the Tenant, the Tenant shall pay the Landlord the monthly installment of initial ANNUAL RENT for the first full month of the Term of this Lease commencing on the Rent Commencement Date.

(b) From and after the Rent Commencement Date, the Tenant shall pay, without any set-off or deduction, the Capital Contribution to the Landlord at the Landlord's Original Address, or to such other person or entity, or at such other place as the Landlord may designate by notice to the Tenant. Said Capital Contribution shall be paid in equal monthly installments in advance on or before the first day of each calendar month during the Term of this Lease, and shall be apportioned for any fractional month in which the Rent Commencement Date or the last day of the Term of this Lease may fall, except that upon the signing of this Lease by the Tenant, the Tenant shall pay the Landlord the monthly installment of the Capital Contribution for the first full month of the Term of this Lease commencing on the Rent Commencement Date.

(i) The Tenant may submit to the Landlord an annual list of requested capital improvements. The Landlord will consider the list and determine whether or not to seek funding authority to appropriate funds towards such capital improvements.

(c) The Landlord reserves the right to provide in any first Mortgage given by it that some or all rents, issues, and profits, and all other amounts of every kind payable to the Landlord under this Lease, shall be paid directly to such Mortgagee for the Landlord's account, and the Tenant covenants and agrees that it will, after receipt by it of notice from the Landlord designating such Mortgagee to whom payments are to be made, pay such amounts thereafter becoming due directly to such Mortgagee, until excused therefrom by notice from such Mortgagee. Prior to such notice from such Mortgagee all such payments to such Mortgagee by the Tenant shall, *pro tanto*, satisfy the Tenant's obligations hereunder in respect of such payments.

#### **SECTION 7. ANNUAL RENT**

(a) The ANNUAL RENT to be paid, commencing on the Rent Commencement Date, February 1, 2018, and to be paid in accordance with Section 6 above, shall be as follows:

#### **RENT STRUCTURE**

<b>YEAR</b>	<b>RATE/sf</b>	<b>ANNUAL RENT</b>	<b>INCREASE</b>
1 (2017-18)	\$4.23	\$33,595	
2 (2018-19)	\$4.31	\$34,267	2%
3 (2019-20)	\$4.40	\$34,953	2%
4 (2020-21)	\$4.58	\$36,350	4%
5 (2021-22)	\$4.76	\$37,804	4%
6 (2022-23)	\$4.95	\$39,316	4%

**Rent paid in years 7 through 10 of this agreement are subject to negotiation.**



(b) The Arlington Redevelopment Board requires an annual Capital Contribution to be paid to offset the costs of maintaining the building. The annual Capital Contribution is equal to \$0.50 per square foot of the Demised Premises, or \$3,850, payable monthly at the rate of \$320.83. This cost remains fixed throughout the life of the Lease and is not subject to the Adjustment.

#### **SECTION 8. PAYMENT OF ADDITIONAL RENT**

(a) Except as otherwise specifically provided herein, any sum, amount, items, or charges designated or considered as Additional Rent in this Lease shall, following written notice to the Tenant, on or before the thirtieth (30th) day after giving of such notice to the Tenant, be paid by the Tenant to the Landlord, without any setoff or deduction, at the Landlord's Original Address, or at such other location as the Landlord may designate. Any such notice shall specify in reasonable detail the basis of such Additional Rent. The Landlord and the Tenant may negotiate in writing a schedule for payment of Additional Rent that exceeds the thirty (30) days specified in this Section 8.

#### **SECTION 9. OPERATING EXPENSES**

Except as otherwise set forth in this Lease, the Tenant shall not be responsible for costs and expenses relating to the capital improvements or replacement, or any financing or refinancing, of the Building or Land, including, without limitation, interest, principal, and other payments, ground rents, closing costs, attorneys' fees, points, fees, and commissions, or fines and penalties incurred by the Landlord due to violations by the Landlord of any governmental rule, or the Landlord's advertising and promotional expenditures, or real estate brokerage commissions, other than as arising in connection with the Landlord's exercise of its default remedies under Section 26 below. It is the understanding of the Landlord and the Tenant that all of the Landlord's costs and expenses associated with the Building and the Land, including management costs associated with the Building and the Land, are the responsibility of the Landlord.

(a) Tenant shall be responsible for six percent (6%) payment of annual electrical expenses. This amount shall not exceed one-thousand dollars (\$1,000).

#### **SECTION 10. REMOVAL OF ORDINARY WASTE**

(a) As long as the Tenant is not in default beyond grace periods under any of the terms, covenants, or conditions of this Lease on the Tenant's part to be observed or performed, the Landlord shall cause ordinary waste to be removed from the Demised Premises.

#### **SECTION 11. CARE OF DEMISED PREMISES**

(a) The Tenant shall act with care in its use and occupancy of the Demised Premises, and the fixtures, and equipment therein, and its use of the Tenant's Special Installations; and,

at the Tenant's sole cost and expense, shall make all non-structural and non-capital repairs and replacements to the Demised Premises necessary to keep the same in the same condition they are now in, or may hereafter be put by the Landlord or the Tenant (fire, casualty, taking and normal wear and tear excepted). Without limiting the generality of the foregoing, the repairs and replacements to the Demised Premises for which the Tenant is responsible include: the surfaces of the interior walls; the surfaces of the exterior walls; all electrical, plumbing, sprinkler, sewage, air conditioning, ventilating and heating equipment, and facilities that serve the Demised Premises, and the wiring, pipes, motors, and fixtures used in connection therewith; all doors, door moldings and frames; all automatic door opening installations; all windows, window moldings, and building appliances, meters, fixtures, and equipment appurtenant to, and serving exclusively, the Demised Premises. The Tenant shall also replace any glass that may be changed or broken with glass of the same quality. The Tenant shall keep the stairwells, corridors, land areas, access walks, and parking areas free of debris, equipment, and personal property of the Tenant, except as the Landlord may otherwise consent in writing in its sole and absolute discretion. Notwithstanding anything set forth in this Section 11(a) to the contrary, the Tenant shall not be required to make any Capital Improvements, as defined in Section 1 above, to the Demised Premises.

(b) Except as otherwise provided in Subsection (a) above of this Section 11, the Landlord shall make, as and when necessary, structural repairs to the Demised Premises. The Landlord's obligations under the immediately preceding sentence shall not occur until after notice by the Tenant to the Landlord of the necessity of any specific repair. If the structural repairs required to be made by the Landlord hereunder would exceed \$50,000 in cost, the Landlord may terminate this Lease on thirty (30) days written notice to the Tenant.

(c) The Tenant, at the Tenant's sole cost and expense, shall make all repairs and replacements, structural or otherwise, necessitated or occasioned by the acts, omissions, or negligence of the Tenant, or any person claiming through or under the Tenant, or by the use or occupancy, or manner of use or occupancy, of the Demised Premises by the Tenant, or any such person.

## **SECTION 12. ALTERATIONS AND INSTALLATIONS BY TENANT**

(a) The Tenant shall not make or perform, or permit the making or performance of, any alterations, installations, improvements, additions or other physical changes in or about the Demised Premises (referred to collectively as "Alterations") without the Landlord's prior written consent, which may be granted or withheld by the Landlord in its sole and absolute discretion, except that the Tenant may paint the Demised Premises and install non-structural partitions within the Demised Premises with the Landlord's written consent, which will not be unreasonably withheld. Notwithstanding the foregoing provisions of this paragraph, or the Landlord's consent to any Alterations, all Alterations, whether made prior to or during the Term of this Lease, shall be made and performed in conformity with, and subject to, the following provisions: all Alterations shall be made and performed at the Tenant's sole cost and expense, and at such time and in such manner as the Landlord may reasonably from time to time

designate; Alterations shall be made only by contractors or mechanics approved by the Landlord, such approval not unreasonably to be withheld or delayed; the Tenant shall submit to the Landlord reasonably detailed plans and specifications for each proposed Alteration, and shall not commence any such Alteration without first obtaining the Landlord's approval of such plans and specifications; prior to the commencement of each proposed Alteration, the Tenant shall furnish to the Landlord a duplicate original policy of comprehensive public liability insurance (including property damage coverage) in which the Landlord and its agents shall be named as parties insured, which policies shall be issued by companies, and shall be in form and amounts reasonably satisfactory to the Landlord, and shall be maintained by the Tenant until the completion of such Alteration (the provisions of this paragraph shall not limit the requirements of the Tenant with respect to liability insurance as set forth in other articles of this Lease); all fireproof wood test reports, electrical and air-conditioning certificates, and all other permits, approvals, and certificates required by all governmental authorities shall be timely obtained by the Tenant and submitted to the Landlord; notwithstanding the Landlord's approval of plans and specifications for any Alteration, all Alterations shall be made and performed in full compliance with all applicable laws, orders, and regulations of federal, state, county, and municipal authorities, and with all directions, pursuant to law, of all public officers, and with all applicable rules, orders, regulations, and requirements of the local Board of Fire Underwriters and the New England Fire Insurance Rating Association, or any similar body having a similar function; all Alterations shall be made and performed in accordance with the Tenant Rules and Regulations set forth herein (see also Section 18); all materials and equipment to be incorporated in the Demised Premises as a result of all Alterations shall be of good quality.

(b) Except to the extent specifically provided in Subsection (d) below of this Section 11, all appurtenances, fixtures, improvements, additions, and other property attached to, or installed in the Demised Premises, whether by the Landlord or the Tenant or others, and whether at the Landlord's expense, or the joint expense of the Landlord and the Tenant, which are of a permanent nature, or which cannot be removed without structural damage to the Building, shall be and remain the property of the Landlord, at the expiration or earlier termination of the Term. Any replacements of any property of the Landlord, whether made at the Tenant's expense or otherwise, shall be and remain the property of the Landlord. Notwithstanding the foregoing, the Landlord may require the Tenant to remove at its expense any property that the Tenant has attached to the Demised Premises that, under the terms hereof, would not be removed by the Tenant from the Demised Premises at the expiration of the Term of this Lease, by giving the Tenant written notice at least one hundred twenty (120) days prior to the termination of this Lease, and the Tenant shall remove such property at its expense and restore the Demised Premises to the condition they were in prior to the installation of said property; provided however, that the Tenant shall not be obligated to remove any Alterations constituting Tenant's Work.

(c) All furniture, furnishings and equipment (but not the Building equipment, such as heating, ventilating and air-conditioning equipment), including without limitation, murals, carpets, rugs laid on top of carpets (but not wall-to-wall carpeting), business machines and

equipment, partitions which are moveable, and any moveable property, installed by or at the expense of the Tenant shall remain the Property of the Tenant, and are referred to herein as "the Tenant's Special Installations". The Tenant may at its expense remove all or any part of said property at any time during the Term of this Lease, and shall at its expense remove all of said property at the expiration, or other termination of the term hereof, unless the Landlord shall otherwise consent in writing. Upon removal of any or all of said property the Tenant shall then repair all damage caused by said removal, as provided in Section 11 above.

(d) Notice is hereby given that the Landlord shall not be liable for any labor or materials furnished, or to be furnished, to the Tenant upon credit, and that no mechanic's or other lien, or any such labor or material, shall attach to or effect the reversion or other estate or interest of the Landlord in and to the Demised Premises. Whenever, and as often as, any mechanic's lien shall have been filed against the Demised Premises based upon any act or interest of the Tenant, or of anyone claiming through the Tenant, or if any lien or security interest with respect thereto, shall have been filed affecting any materials, machinery, or fixtures used in the construction, repair, or operation thereof, or annexed thereto, by the Tenant or its successors in interest, the Tenant shall forthwith take such action by bonding, deposit, or payment as will remove or satisfy the lien or other security interest, and in default thereof after the expiration of thirty (30) days after notice to the Tenant, the Landlord, in addition to any other remedy under this Lease, may pay the amount secured by such lien or security interest, or discharge the same by deposit, and the amount so paid or deposited shall be collectible as Additional Rent. The provisions of this **Subsection 12(d)** shall not be applicable to liens filed with respect to work done for the Tenant's account by the Landlord.

### **SECTION 13. TENANT'S SIGNS**

(a) The Tenant shall not display or erect any lettering, signs, advertisements, awnings, or other projections on the exterior of the Demised Premises, other than currently approved signs, without the Landlord's approval, which approval shall be at the sole and absolute discretion of the Landlord. If approved by the Landlord, signage must also be permitted in accordance with applicable provisions of the Arlington Zoning Bylaw, and of other applicable statutes, bylaws, rules, and regulations.

### **SECTION 14. CONDITION OF DEMISED PREMISES**

(a) The Tenant agrees that it is leasing and accepting the Demised Premises in an "as is" condition as of the Execution Date, and that the Landlord does not have any obligations of any nature in connection with the preparation of said Premises for the Tenant's occupancy. The Tenant acknowledges that the Tenant has inspected the Demised Premises, and the Tenant is satisfied with the condition of the Demised Premises. The Tenant at its sole cost and expense shall install in, and keep and maintain in, the Demised Premises all safety appliances, permits, and equipment in conformity with any governmental law, rule, or regulation applicable to its use of the Demised Premises.

(b) Notwithstanding anything set forth herein to the contrary, the Tenant shall have no responsibility:

(i) for the containment of asbestos existing in the Demised Premises as of the Commencement Date, except that the Tenant shall take no actions that will cause the asbestos in the Demised Premises (if any) to become friable, and shall give immediate written notice to the Landlord upon discovering friable asbestos in the Demised Premises; or,

(ii) for causing the Building to be put into compliance with the requirements (if any) of the Americans with Disabilities Act or the Massachusetts Architectural Access Board, unless the Tenant elects to comply with said requirements.

#### **SECTION 15. USE OF DEMISED PREMISES & COMMON AREAS**

(a) The Tenant shall use and occupy the Demised Premises for educational use and as a dedicated arts space, including but not limited to administrative offices, arts classes and workshops for children and adults, art camps, art gallery and exhibition space, theater and live music performance and film showings. The Tenant may use the Demised Premises for its intended purposes during Business Days. Notwithstanding the foregoing, the Tenant may make occasional use of the Demised Premises without the Landlord's written permission on weekends and evenings; provided, however, if the Landlord, in the Landlord's sole discretion, determines that such occasional use is disruptive or the source of complaints, then the Landlord may require its written permission to be sought for all uses of the Demised Premises outside the daytime hours on Business Days as described above, which permission may be withheld in its sole and absolute discretion.

(b) The tenant shall have normal use of the common areas of the building.

#### **SECTION 16. QUIET ENJOYMENT**

(a) The Landlord covenants and agrees that, upon the Tenant's paying the ANNUAL RENT and any Additional Rent payable hereunder, and performing and observing the covenants and provisions of this Lease on its part to be performed and observed, the Tenant shall peaceably and quietly enjoy the Demised Premises subject to the provisions of this Lease.

#### **SECTION 17. LANDLORD'S ACCESS TO DEMISED PREMISES**

(a) The Landlord during the Term of this Lease may enter the Demised Premises for the purposes of performing its covenants under the Lease.

(b) The Tenant shall permit the Landlord, or any public utility, to erect, use, and maintain pipes, ducts, and conduits in and through the Demised Premises, provided the same are installed at such times, and by such methods, as will not materially interfere with the Tenant's use of the Demised Premises. The Landlord, or any public utility, or their agents, shall

have the right, upon reasonable advance written notice, to enter and/or pass through the Demised Premises, or any part or parts thereof, to examine the same, and to show them to Mortgagees, and to prospective purchasers, Mortgagees, or lessees, and for the purpose of operation and maintenance, including but not limited to, necessary repairs, installations, alterations, and replacements that the Landlord may choose to make, provided, however, that the Landlord shall use all reasonable efforts to minimize interference with the Tenant's use and occupancy caused thereby, and shall return all finished surfaces to the same condition they were in immediately prior to such repairs, installations, alterations, and replacements, subject, however, to zoning and building laws then in existence.

(c) The Landlord shall also have the right to have its personnel enter and/or pass through the Demised Premises, or any part thereof, at any reasonable time, and the Landlord may enter the Demised Premises, or any part thereof, at such other times when such entry shall be required by circumstances of emergency affecting the Demised Premises; provided, however, that the Landlord shall use all reasonable efforts to minimize interference with the Tenant's use and occupancy caused by any such entry.

(d) During the twelve (12) months prior to the expiration of the Term of this Lease, the Landlord may, upon reasonable written notice to the Tenant, exhibit the Demised Premises to prospective tenants, provided, however, that the Landlord uses all reasonable efforts to minimize interference with the Tenant's use and occupancy of the Demised Premises caused thereby. If the Tenant shall have removed all of the Tenant's property therefrom, the Landlord may enter and alter, renovate, and redecorate the Demised Premises, or any part thereof, without diminution or abatement of ANNUAL RENT or other compensation.

(e) The Landlord shall be allowed to take all material into and upon the Demised Premises that may be required for repairs or alterations without the same constituting an eviction of the Tenant in whole or in part while such repairs or alterations are being made, by reason of loss or interruption of the operations of the Tenant, provided the Landlord proceeds with diligence and continuity to complete the same, and uses all reasonable efforts to minimize the interference with the Tenant's use and occupancy of the Demised Premises caused thereby.

#### **SECTION 18. COMPLIANCE WITH LAWS, ETC.**

a) Except as otherwise set forth in this Lease, the Tenant shall, at its sole cost and expense, comply with the requirements of every applicable present or future law, ordinance, bylaw, rule, or order of federal, state, county, and municipal authority, including obtaining any licenses, permits, or approvals therefrom, and with any direction made pursuant to law of any public officer or officers, with respect to the Tenant's use of the Demised Premises, including the making of any Alteration allowed hereunder, structural or otherwise, to the Demised Premises, and with respect to any abatement of nuisance, violation, order, or duty arising from the Tenant's use of the Demised Premises, or from conditions created by or at the instance of the Tenant, or required by reason of a breach of any of the Tenant's covenants or agreements hereunder. If the Tenant receives written notice of any violation of law, ordinance, bylaw, rule,

order, or regulation applicable to the Demised Premises, it shall give prompt notice thereof to the Landlord. However, this paragraph shall not require the Tenant to comply with, nor bring the Demised Premises into compliance with any future law, ordinance, bylaw, rule, or order of federal, state, county, and municipal authority, if the Tenant's use thereof is pre-existing and legally "grandfathered".

(b) The Tenant shall not do, or permit to be done, any act or thing upon the Demised Premises that will invalidate, or be in conflict with, the Massachusetts standard form of fire, boiler, sprinkler, water damage, or other insurance policies, if any, covering the Demised Premises, and will not bring, or keep anything on, the Demised Premises, except as provided in Subsection (d) below of this Section 18, that shall increase the rate of any such insurance policy. The Tenant shall comply, in the conduct of its business, and in the making of any Alterations, with all rules, orders, regulations, or requirements of the local Board of Fire Underwriters and the New England Fire Insurance Rating Association, or any other body having a similar function, and exercising jurisdiction over the Demised Premises.

(c) If, by reason of any failure of the Tenant to comply with any provision of this Lease, the rate of fire, boiler, sprinkler, water damage, or other insurance, if any (with or without extended coverage), on the Demised Premises, or equipment of the Landlord, shall be higher than it otherwise would be, the Tenant shall pay the same, or pay the Landlord as Additional Rent an amount equal to that part of the premiums for such insurance thereafter paid by the Landlord that shall have been charged because of such failure by the Tenant. In the event that any dispute should arise between the Landlord and the Tenant, a schedule or "make up" of rates for the Demised Premises issued by the New England Fire Insurance Rating Association, or any similar body having a similar function, shall be conclusive evidence of the facts therein stated, and of the several items and charges in the rate for any such insurance then applicable to the Demised Premises.

(d) The Tenant covenants and agrees to comply with all federal, state, and local laws, rules, regulations, ordinances, and by-laws thereunder governing the use, storage, and disposal of hazardous materials and oil (as hereinafter defined), and in connection therewith the Tenant agrees that the Tenant shall:

(i) not store or dispose of any hazardous material or oil on the Demised Premises, except in compliance with all laws, ordinances, and regulations pertaining thereto;

(ii) neither directly nor indirectly transport, or arrange for the transport of, any hazardous material or oil, except in compliance with all laws, ordinances, and regulations pertaining thereto;

(iii) take all such action, including, without limitation, the conducting of engineering tests when reasonably required to confirm that no hazardous material or oil has been released on or from the Demised Premises, and to access, contain and remove any such hazardous material or oil on the Demised Premises required by applicable law, rule, or

regulation; such action shall be at the sole cost and expense of the Tenant if it is determined that hazardous material or oil are present upon the Demised Premises as a result of the activities of the Tenant, its agents, clients, contractors, employees, invitees, licensees, servants, or visitors;

(iv) provide the Landlord with written notice:

(aa) upon the Tenant's obtaining knowledge of any potential or known release, or threat of release, of any hazardous material or oil, at or from the Demised Premises;

(bb) upon the Tenant's receipt of any notice to such effect from any federal, state or other governmental authority; and,

(cc) upon the Tenant's obtaining knowledge of any occurrence of any expense or loss by such governmental authority in connection with the assessment, containment, or removal of any hazardous material or oil for which expense or loss the Tenant may be liable.

(e) The Tenant shall indemnify, defend and hold the Landlord harmless of any claim brought or threatened against the Landlord by any federal, state, or local governmental agency or authority, or any other person (as well as from attorneys' fees and expenses in connection therewith), on account of the release of hazardous material or oil on or from the Demised Premises, by the Tenant, its agents, clients, contractors, employees, invitees, licensees, servants, or visitors, or the failure by the Tenant to comply with the terms and provisions hereof, each of which may be defended, compromised, settled, or pursued by the Landlord with counsel of the Landlord's selection, but at the expense of the Tenant. This indemnification shall survive the expiration or other termination of this Lease.

(f) In the event that the Tenant fails to comply with the requirements of any applicable federal, state or other governmental law with respect to the use, treatment, disposal, or storage of hazardous materials or oil on the Demised Premises the Landlord may, at its election, but without obligation to do so, take any and all actions that the Landlord deems necessary to cure said failure of compliance, and any and all amounts paid as a result thereof, together with interest thereon at the default rate set forth in Section 26 below from the date of payment, shall be immediately due and payable by the Tenant to the Landlord as Additional Rent; or the Landlord by the payment of any assessment, claim or charge may, if the Landlord sees fit, be thereby subrogated to the rights of any governmental agency or authority having a claim against the Tenant, but such payment shall not be deemed to relieve the Tenant from any default hereunder, or impair any right or remedy with respect thereto.

(g) The terms "hazardous material(s)", "oil", "release", and threat of release" shall have the same meanings given those terms in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601 et seq., the Massachusetts Hazardous Waste Management



Act, M.G.L. Chapter 21C, and the Massachusetts Oil and Hazardous Material Release Prevention Act, M.G.L. Chapter 21E, as amended from time to time, and in other applicable federal and state laws as amended from time to time.

#### **SECTION 19. COMPLIANCE WITH TENANT RULES AND REGULATIONS**

(a) The Tenant and the Tenant's agents, clients, contractors, employees, invitees, licensees, servants, and visitors shall observe faithfully, and comply strictly with, the Tenant Rules and Regulations annexed hereto at the end of this Lease, and such other and further reasonable rules and regulations as the Landlord may from time to time hereafter adopt, not inconsistent with the provisions or intent of this Lease. In case the Tenant disputes the reasonableness of any additional rule or regulation hereafter made or adopted by the Landlord, the parties hereto agree to submit the question of the reasonableness of such rule or regulation for decision to the Arlington Board of Selectmen, or to such impartial person or persons as the Landlord and the Tenant hereto may designate, whose determination shall be final and conclusive upon the parties hereto. The Tenant may not dispute the reasonableness of any additional rule or regulation unless the Tenant's intention to do so shall be asserted by written notice given to the Landlord within fifteen (15) days after written notice is given to the Tenant of the adoption of any such additional rule or regulation.

(b) The Tenant Rules and Regulations are intended to apply only to the Tenant; therefore, the Landlord shall not be liable to the Tenant for violation of the Tenant Rules and Regulations by the Landlord's agents, clients, contractors, employees, invitees, licensees, servants, and visitors.

#### **SECTION 20. LANDLORD'S LIABILITY; INDEMNITY**

(a) Except for damage or injury arising from any negligence of the Landlord, the Landlord shall not be liable for any damage or injury to person or property of the Tenant, or of any person, done or occasioned by or from the heating, ventilating, or air-conditioning systems; electric wiring; plumbing dampness; water, gas, steam, or other pipes; or sewage; or the breaking of any electric wire; the bursting, leaking, or running of water from any tank, washstand, water closet, waste pipe, sprinkler system, radiator, or any other pipe in, above, upon, or about the Demised Premises, or which may at any time hereafter be so placed; or for any damage to the Tenant's Special Installations, Alterations, or the Tenant's personal property occasioned by fire, explosion, falling plaster, electricity, smoke or wind; or water, snow, or ice being upon or coming through or from the street, roof, subsurface, skylight, trap-door, windows, or otherwise; or for any damage or injuries to persons or property arising from acts or neglect of any tenant or occupant of the Demised Premises, or any owners or occupants of adjacent or contiguous property; or for the loss or theft of any property of the Tenant however caused, including loss of property entrusted to employees of the Landlord; or for any loss, damage, or expense of the Tenant as a result of the Landlord's termination of this Lease under any provisions of this Lease. The Landlord shall not be liable for any latent defects in the Demised Premises.

(b) To the extent permitted by law, the Tenant shall indemnify and save harmless the Landlord and its agents, clients, contractors, employees, invitees, licensees, servants, and visitors, against and from all liabilities, obligations, damages, penalties, claims, costs, and expenses, including reasonable attorneys' fees, paid, suffered, or incurred as a result of any breach by the Tenant, the Tenant's agents, clients, contractors, employees, invitees, licensees, servants, or visitors, of any covenant or condition of this Lease; or as a result of the carelessness, negligence, or improper conduct of the Tenant, the Tenant's agents, clients, contractors, employees, invitees, licensees, servants, or visitors; or as a result of the release of hazardous substances or materials on the Demised Premises arising from, or resulting from, the activities of the Tenant, the Tenant's agents, clients, contractors, employees, invitees, licensees, servants, or visitors; or as a result of any injury or damage to any person or property upon or about the Demised Premises arising out of the use, or occupancy, of the Demised Premises by the Tenant, the Tenant's agents, clients, contractors, employees, invitees, licensees, servants, or visitors. The Tenant's liability under this Lease extends to the acts and omissions of any sub-tenant, and any agent, client, contractor, employee, invitee, licensee, servant, or visitor of any sub-tenant. In case any action or proceeding is brought against the Landlord by reason of any such claim, the Tenant, upon written notice from the Landlord, will, at the Tenant's expense, resist or defend such action or proceeding by counsel, approved by the Landlord in writing, such approval not to be unreasonably withheld.

#### **SECTION 21. STOPPAGE OF SERVICES, INABILITY TO SUPPLY SERVICES**

(a) The Landlord reserves the right to temporarily stop the service of heating, air-conditioning, if any, ventilating, elevator, if any, plumbing, electricity, or other mechanical systems or facilities in the Demised Premises, if necessary by reason of accident or emergency, or for repairs, alterations, replacements, additions, or improvements that, in the reasonable judgment of the Landlord, are desirable or necessary, until said repairs, alterations, replacements, additions, or improvements shall have been completed. In the event of such stoppage, the Landlord shall use all reasonable means to expeditiously resume said stoppage. The exercise of such right by the Landlord shall not constitute an actual or constructive eviction, in whole or in part, or relieve the Tenant from any of its obligations under this Lease, including without limitation, the obligation of the Tenant to make repairs, or impose any liability upon the Landlord or its agents by reason of inconvenience or annoyance to the Tenant, or injury to, or interruption of, the Tenant's business, or otherwise; or entitle the Tenant to any abatement or diminution of rent. Except in case of emergency repairs, the Landlord will give the Tenant reasonable advance notice of any contemplated stoppage of any such systems or facilities pursuant to the foregoing, and will use diligence to complete any such repairs, alterations, replacements, additions, or improvements promptly. The Landlord shall also perform any such work in a manner designed to minimize interference with the Tenant's normal business operations, and will work with the Tenant prior to the commencement of said work to define a schedule for the completion of said work.

(b) If the Landlord shall fail to supply, or be delayed in supplying, any service

expressly or impliedly to be supplied under this Lease, or shall be unable to make, or be delayed in making, any repairs, alterations, additions, improvements, or decorations, or shall be unable to supply, or be delayed in supplying, any equipment or fixtures, and if such failure, delay or inability shall result from Unavoidable Delays, such failure, delay, or inability shall not constitute an actual or constructive eviction, in whole or in part, nor impose any liability upon the Landlord or its agents by reason of inconvenience or annoyance to the Tenant, or injury to, or interruption of, the Tenant's use, business or occupation, or otherwise, or entitle the Tenant to any abatement or diminution of rent.

## **SECTION 22. DAMAGE BY FIRE OR OTHER CASUALTY**

(a) In the event of loss of, or damage to, the Demised Premises by fire or other casualty, the rights and obligations of the parties hereto shall be as follows:

(i) If the Demised Premises or any part thereof shall be damaged by fire or other insured casualty, the Tenant shall give prompt notice thereof to the Landlord, and the Landlord, upon receiving such notice, shall proceed promptly and with reasonable diligence (unless this Lease is terminated as hereinafter provided in this Section 22), subject to Unavoidable Delays and a reasonable time for adjustment of insurance losses, to repair, or cause to be repaired, such damage, to the extent as can be reasonably accomplished from the net proceeds of insurance actually received by, or made available to, the Landlord, in a manner designed to minimize interference with the Tenant's occupancy (but with no obligation to employ labor at overtime or other premium pay rates) and substantially to the same condition the Demised Premises were in immediately prior to such damage, subject, however, to zoning and building laws then in existence. The Landlord shall have no liability for delays in repairing the Demised Premises as in this Lease provided. If the Demised Premises or any part thereof shall be rendered untenable by reason of such damage, the ANNUAL RENT and any Additional Rent shall proportionately abate with respect thereto for the period from the date of such damage to the date when such damage shall have been repaired for the portion of the Demised Premises rendered untenable. However, if, prior to the date when all of such damage shall have been repaired, any part of the Demised Premises so damaged shall be rendered tenantable and shall be used or occupied by the Tenant or any person or persons claiming through or under the Tenant, then the amount by which the ANNUAL RENT and Additional Rent shall abate shall be equitably apportioned for the period from the date of any such use.

(ii) If as a result of fire or other casualty (whether insured against or not) 25% or more of the Demised Premises is rendered untenable, the Landlord or the Tenant, within forty-five (45) days from the date of such fire or casualty, may terminate this Lease by written notice to the other party, specifying a date, not less than twenty (20) nor more than forty (40) days after the giving of such notice, on which the Term of this Lease shall expire as fully and completely as if such date were the date herein originally fixed for the expiration of the Term of this Lease. The ANNUAL RENT, and Additional Rent as applicable, shall be apportioned as of the date of such fire or other casualty. If this Lease is not so terminated, then

the Landlord shall proceed to repair the damage to the Demised Premises, if any shall have occurred, and the ANNUAL RENT, and Additional Rent as applicable, shall meanwhile be apportioned and abated, all as provided in Subsection (a)(i) above of this Section 22.

(b) The Landlord shall not be required to repair or replace any of the Tenant's Special Installations or Alterations, or any other personal property of the Tenant, and no damages, compensation, or claim shall be payable by the Landlord for inconvenience, loss of business, or annoyance arising from any repair or restoration of any portion of the Demised Premises.

(c) The provisions of this Section 22 shall be considered an express agreement governing any instance of damage or destruction of the Demised Premises by fire or other casualty, and any law now or hereafter in force providing for such a contingency in the absence of express agreement shall have no application.

### **SECTION 23. PROPERTY INSURANCE**

(a) Beginning on the Execution Date of this Lease, and continuing until the expiration or earlier termination of the Term of this Lease, the Tenant shall, at its expense, carry insurance on the Demised Premises and the improvements used in connection with, or appurtenant to, the Building, or relating to the Demised Premises, insuring against loss or damage by fire, windstorm, or other casualty included in the perils covered by standard property insurance policies with extended coverage; and insuring against vandalism, malicious mischief, and such other risks of a similar or dissimilar nature as shall be insurable against under present or future forms of property insurance policies that are standard for use in the Commonwealth of Massachusetts; such insurance shall be in amounts sufficient to comply with any co-insurance clause applicable to the location and character of the Building, or to the improvements used in connection with, or appurtenant to the Building, or relating to the Demised Premises, and in any event, in amounts not less than 80% with respect to fire coverage insurance, or in the case of extended coverage, 100%, of the then repair and replacement cost of the property insured; during any construction periods, the Tenant shall carry or cause to be carried builder's risk coverage in amounts appropriate for the construction work undertaken. The Tenant shall, throughout the Term of this Lease, at its expense, keep the Tenant's Special Installations insured against all loss or damage by fire with extended coverage in an amount sufficient to prevent the Tenant from becoming a co-insurer. Such policy or policies of insurance covering the Demised Premises shall contain endorsements wherein and whereby the Landlord shall be given thirty (30) days' advance written notice of any cancellation or reduction in insurance under, or material amendment of, any policy and/or any endorsement issued after the date of such policy. Such policies shall be with responsible insurance companies satisfactory to the Landlord, and licensed to do business in the Commonwealth of Massachusetts that have a rating of at least "A-" and are within a financial size category of not less than "Class VIII" in the most current Best's rating guide. Prior to Delivery of Possession of the Premises to the Tenant, the Tenant shall deliver to the Landlord duplicate originals of such insurance. All such policies affecting the Demised Premises shall name the Landlord, the holder

of any mortgage affecting the Demised Premises, and the Tenant as parties insured thereto, as their respective interests may appear.

(b) As provided in this Section 23, in the case of any loss or damage covered by such insurance carried by either the Landlord or the Tenant, the proceeds of such insurance applicable to the Demised Premises, but excluding the proceeds applicable to the Tenant's Special Installations or Alterations, which items are the responsibility of the Tenant as provided in Section 22(b) above, and the amounts for which are separately scheduled on any applicable policy, shall be devoted by the Landlord, so far as may be required, to the repair, rebuilding, or restoration of the Demised Premises as required under the terms of this Lease, provided, however, that this Lease shall not have been terminated by the Tenant or the Landlord under the provisions of Section 22 above. The insurer shall pay such proceeds to the Landlord to hold for disposition in accordance with the terms of this Lease. Any such proceeds not required to repair, rebuild, or restore the Demised Premises, or if this Lease is terminated in accordance with the provisions of Section 22 above by either the Landlord or the Tenant, shall become and remain the property of the Landlord.

(c) Each policy of property insurance, in which the Landlord or the Tenant is not a named insured, taken out by either the Landlord or the Tenant, relating to the Demised Premises, or to any improvements used in connection with or appurtenant to the Demised Premises, or to the Tenant's Special Installations, shall contain, if available from the insurer, an appropriate clause or endorsement under which the insurer agrees that such policy shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses payable under such policy. Should any additional premium or fee be exacted for any such clause or endorsement, the party obligated to obtain the same shall be released from such obligation unless the other party shall pay such additional premium or fee. Provided that, and during such time as, such clause or endorsement is obtainable without additional premium or fee, or if not, after such additional premium or fee shall have been paid, the Landlord and the Tenant hereby waive all right of recovery which each might otherwise have against the other, its agents, clients, contractors, employees, invitees, licensees, servants, or visitors for any loss or damage to the Demised Premises, or improvements used in connection with or appurtenant to the Demised Premises, or the Tenant's Special Installations, as the case may be, by reason of any peril insured against under any such policy, notwithstanding that such loss or damage may result from the negligence or fault of the other, its agents, clients, contractors, employees, employees, invitees, licensees, servants, or visitors.

(d) The Landlord and the Tenant will:

(i) if requested, notify the other as to the provisions of fire and extended coverage insurance policies obtained pursuant to Subsection (a) above of this Section 23; and,

(ii) notify the other promptly of any change of the terms of any such policy that would affect such provisions.



(e) To the extent that such action will not invalidate any policy of insurance (other than policies of fire and extended coverage insurance) taken out by the Landlord or the Tenant relating to the Demised Premises, other improvements used in connection with and appurtenant to the Demised Premises or the Tenant's Special Installations, as the case may be, and to the extent of actual recovery under such policy, the Landlord and the Tenant hereby waive all right of recovery which each might otherwise have against the other, its agents, clients, contractors, employees, invitees, licensees, servants, and visitors for any loss or damage to the Demised Premises or the Tenant's Special Installations as the case may be, by reason of any peril insured against under any such policy, notwithstanding that such loss or damage may result from the negligence or fault of the other, its agents, clients, contractors, employees, invitees, licensees, servants, or visitors.

(f) The Tenant understands and acknowledges that the Landlord is, and intends to remain, a self-insurer, and does not have, and does not intend to obtain in the future, any physical property insurance covering the Demised Premises.

#### **SECTION 24. TENANT'S LIABILITY INSURANCE**

(a) The Tenant shall, at its expense, beginning on the Execution Date of this Lease, and throughout the Term of this Lease, maintain commercial general liability insurance against claims for damages for bodily injury or death occurring upon, in, or about the Demised Premises, such insurance to afford protection in limits of not less than \$1,000,000 in respect to personal injury or death to any one person, and \$2,000,000 in respect to personal injury or death to any number of persons in any one occurrence; and \$1,000,000 for property damage. Such comprehensive general liability insurance may be effected by a policy or policies of blanket insurance which may cover other property in addition to the Demised Premises, provided that the protection afforded thereunder shall be no less than that which would have been afforded under a separate policy or policies relating only to the Demised Premises, and provided further that in all other respects any such policy shall comply with the other provisions of this Section 24.

(b) All insurance provided in this Section 24 shall be effected under valid and enforceable policies issued by insurers, satisfactory to the Landlord, of generally recognized responsibility, licensed to do, and doing, business in the Commonwealth of Massachusetts, and shall name the Landlord as an insured. Copies of required insurance policies, plus certificates of insurance, shall be delivered by the Tenant to the Landlord within ten (10) days of the execution of this Lease. The Tenant shall submit copies of successor policies and certificates of insurance to the Landlord on an annual basis within thirty (30) days of renewal of policies. The Tenant shall also furnish to the Landlord upon the Commencement Date, and thereafter from time to time at the Landlord's request, a certificate signed by an executive officer of the Tenant certifying that the insurance required under this Section 24 is in force, that such insurance complies with the provisions of this Section 24, and that the premiums thereon have been paid.

(c) All policies of insurance required under this Section 24 shall, to the extent

obtainable, contain an agreement by the insurers that such policies shall not be canceled or changed without at least thirty (30) days' prior written notice to the Landlord.

(d) The insurance policies required by this Lease shall specifically cover the indemnity provisions of this Lease. The Tenant shall be considered in default of this Lease if any of the required insurance coverages expires, lapses, or is otherwise not valid.

## **SECTION 25. DEFAULT OF TENANT**

(a) If at any time subsequent to the date of this Lease, any one or more of the following events (herein referred to as "Default of the Tenant") shall happen:

(i) the Tenant shall default in the due and punctual payment of any charge or amount payable hereunder, and such default shall continue for fifteen (15) days after written notice to the Tenant from the Landlord (for purposes of the Landlord's availing itself of its remedies at law, any charges or amounts payable hereunder shall be deemed "rent"); or,

(ii) the Tenant shall neglect or fail to perform, or observe, any other covenant herein contained on the Tenant's part to be performed, or observed; and the Tenant shall fail to remedy the same within thirty (30) days after written notice to the Tenant from the Landlord specifying such neglect or failure; or, if such Default of the Tenant is of such a nature that the Tenant cannot reasonably remedy the same within such thirty (30)-day period, the Tenant shall fail to commence promptly to remedy the same within such thirty (30)-day period, and to prosecute such remedy to completion with diligence and continuity; or,

(iii) the Tenant shall make an assignment for the benefit of creditors; or,

(iv) the Tenant's leasehold interest in the Demised Premises shall be taken on execution, or by other process of law (other than a Taking), directed against the Tenant; or,

(v) the Tenant shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself, under any present or future federal, state, or other statute, law, or regulation for the relief of debtors; or shall seek or consent to acquiesce in, the appointment of any trustee, receiver, or liquidator of the Tenant, or of all or any substantial part of its properties; or shall admit in writing its inability to pay its debts generally as they become due; or,

(vi) a petition shall be filed against the Tenant in bankruptcy, or under any other law seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, under any present or future federal, state, or other statute, law, or regulation, and shall remain undismissed or unstayed for an aggregate of sixty (60) days (whether or not consecutive); or if a debtor in possession (whether or not the Tenant), trustee, receiver, or liquidator of the Tenant, or of all or any substantial part of its properties, or of the

Demised Premises, shall be appointed without the consent or acquiescence of the Tenant, and such appointment shall remain unvacated, or unstayed, for an aggregate of sixty (60) days (whether or not consecutive)—

**then**, in any such cases, the Landlord may at any time thereafter terminate this Lease by written notice to the Tenant, specifying a date not less than ten (10) days after the giving of such notice on which this Lease shall terminate, and this Lease shall come to an end on the date specified therein as fully and completely as if such date were the date herein originally fixed for the expiration of the Term of this Lease; and the Tenant will then quit and surrender the Demised Premises to the Landlord, but the Tenant shall remain liable as hereinafter provided. All costs and expenses incurred by, or on behalf of, the Landlord (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any Default of the Tenant, shall be paid by the Tenant.

(b) If this Lease shall have been terminated as provided in this Section 25, or if any execution or attachment shall be issued against the Tenant, or any of the Tenant's property, whereupon the Demised Premises shall be taken or occupied by someone other than the Tenant, then the Landlord may, without notice, re-enter the Demised Premises, either by force, summary proceedings, ejectment, or otherwise, and remove and dispossess the Tenant, and all other persons, and any and all property, from the same, as if this Lease had not been made, and the Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

(c) In the event of such termination, the Tenant shall pay the ANNUAL RENT, and other sums payable hereunder, up to the time of such termination; and thereafter the Tenant, until the end of what would have been the Term of this Lease in the absence of such termination, and whether or not the Demised Premises shall have been re-let, shall be liable to the Landlord for, and shall pay to the Landlord, as liquidated current damages:

(i) the ANNUAL RENT, Capital Contribution, any Additional Rent, and other sums that would be payable hereunder if such termination had not occurred, LESS

(ii) the net proceeds, if any, of any re-letting of the Demised Premises, after deducting all expenses in connection with such re-letting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs, and expenses of preparation for such re-letting.

(d) the Tenant shall pay such current damages to the Landlord monthly on the days on which the ANNUAL RENT would have been payable hereunder if this Lease had not been terminated, and the Landlord shall be entitled to receive the same from the Tenant, on each such day.

(e) At any time after such termination, whether or not the Landlord shall have collected any such current damages, the Landlord shall be entitled to recover from the Tenant,

and the Tenant shall pay to the Landlord, on demand, as liquidated final damages, and in lieu of all such current damages beyond the date of such demand, an amount equal to the excess, if any, of:

(i) the ANNUAL RENT, any Additional Rent, and other sums as hereinbefore provided, that would be payable hereunder from the date of such demand (or, if it be earlier, the date to which the Tenant shall have satisfied in full its obligation under this Section 25 to pay current damages) for what would be the then unexpired term of this Lease, if the same remained in effect, LESS

(ii) the then fair net rental value of the Demised Premises for the same period.

(f) In the computation of such liquidated final damages the amount by which any installment of ANNUAL RENT, any Additional Rent, and other sums shall exceed the fair and reasonable rental value of the Demised Premises for the period for which such installment of ANNUAL RENT, any Additional Rent, and other sums would have been payable, shall be discounted at the rate of 6% per annum to the date of such demand, or to the date to which the Tenant shall have satisfied in full its obligation to pay such current damages, as the case may be. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, the Demised Premises, or any part thereof, shall have been re-let by the Landlord for the period which would otherwise have constituted the unexpired portion of the Term of this Lease, or any part thereof, the amount of rent reserved on such re-letting shall be deemed, *prima facie*, to be the fair and reasonable rental value for the part, or the whole, of the Demised Premises so re-let during the term of re-letting.

(g) If any statute or rule of law governing a proceeding in which such liquidated final damages are to be proved shall validly limit the amount thereof to an amount less than the amount above agreed upon, the Landlord shall be entitled to the maximum amount allowable under such statute or rule of law. Nothing contained in this Section 25 shall be deemed to limit or preclude the recovery by the Landlord from the Tenant of the maximum amount allowed to be obtained in damages by any statute or rule of law, or of any sums or damages to which the Landlord may be entitled, in addition to the damages set forth in this Section 25.

(h) In case of any Default of the Tenant, re-entry, expiration and dispossession by summary proceedings or otherwise, the Landlord may

(i) re-let the Demised Premises or any part or parts thereof, either in the name of the Landlord or otherwise, for a term or terms which may, at the Landlord's option, be equal to or less than, or exceed, the period which would otherwise have constituted the balance of the Term of this Lease; and may grant concessions or free rent to the extent that the Landlord considers advisable and necessary to re-let the same; and,

(ii) make such alterations, repairs, and decorations in the Demised Premises

as the Landlord, in its reasonable judgment, considers advisable and necessary for the purpose of re-letting the Demised Premises; and the making of such alterations, repairs, and decorations shall not operate, or be construed, to release the Tenant from liability hereunder as aforesaid. The Landlord shall in no event be liable in any way whatsoever for failure to re-let the Demised Premises, or, in the event the Demised Premises are re-let, for failure to collect the rent thereof under such re-letting. The Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of the Landlord obtaining possession of the Demised Premises, by reason of the violation by the Tenant of any of the covenants and conditions of this Lease.

(i) The Tenant acknowledges that any default in the timely payment of the monthly installments of ANNUAL RENT will result in additional expense to the Landlord, to verify the default and collect the Rent. The Tenant acknowledges further that the actual cost to the Landlord in each particular case will vary according to the circumstances of the case, and that the determination of the precise costs would, in itself, result in considerable expense. Accordingly, the Tenant agrees that if any monthly installment of ANNUAL RENT due under this Section 25 is not paid prior to the fifth (5th) day of the month when due, the Tenant shall pay the Landlord a late charge of \$100 with respect to the delayed or defaulted installment, as liquidated damages in lieu of the actual amount of expense incurred by the Landlord by reason of the delay or default in payment, and not as a penalty or as additional interest. Such late payment charges shall be in addition to all money damages and other rights and remedies available to the Landlord under this Lease, and under the law of Massachusetts.

## **SECTION 26. REMEDYING DEFAULTS**

(a) If either party shall default in the observance or performance of any term or covenant on its part to be observed, or performed under, or by virtue of, any of the terms or provisions in any Section of this Lease, the other party, without being under any obligation to do so, and without thereby waiving such default, may remedy such default for the account, and at the expense of, the defaulting party, immediately and without notice in case of emergency, or, in any other case, if the defaulting party shall fail to remedy such default with all reasonable diligence within thirty (30) days after notice specifying such default in reasonable detail. If either party makes any expenditures or incurs any obligations for the payment of money in connection therewith, including, but not limited to, reasonable attorneys' fees in instituting, prosecuting, or defending any action or proceeding, such sums paid or obligations incurred, with interest at the rate of 2% per annum over the prime rate as announced by the Bank of America, and costs, shall be paid to it by the other party.

## **SECTION 27. REMEDIES**

(a) The specific remedies to which the Landlord or the Tenant may resort under the terms of this Lease are cumulative, and are not intended to be exclusive of any other remedies or means of redress to which the Landlord or the Tenant, as the case may be, may be lawfully entitled in case of any breach, or threatened breach, by either of them of any provisions of this



Lease. If there is more than one the Tenant, the obligations imposed by this Lease upon the Tenant shall be joint and several.

#### **SECTION 28. NON-RECOURSE**

(a) The Tenant shall look only to the estate held by the Landlord in the Demised Premises, and shall in no event have recourse to the Landlord, or to the individual estates of the persons signing herein for the Landlord, for the satisfaction of any claim arising out of, or resulting from, any term, covenant, or condition of this Lease.

(b) The Landlord shall not look to the individual estates of the persons signing herein for the Tenant, and shall in no event have recourse to the individual estates of the persons signing herein for the Tenant, for the satisfaction of any claim arising out of, or resulting from, any term, covenant, or condition of this Lease.

(c) Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT.

#### **SECTION 29. WAIVER OF TRIAL BY JURY**

(a) It is mutually agreed by and between the Landlord and the Tenant that the respective parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of, or in any way connected with, this Lease, the relationship of the Landlord and the Tenant, the Tenant's use of, or occupancy of, said premises, and any emergency statutory or any other statutory remedy.

#### **SECTION 30. WAIVER REQUIREMENTS**

(a) No agreement to make or accept any surrender, change, modification, waiver, termination, discharge, release, or cancellation of this Lease, or to relieve the Tenant of any obligation or liability under this Lease, shall be valid unless in writing signed by the Landlord. The delivery of keys to any employee of the Landlord, or of the Landlord's agent, shall not operate as a termination of this Lease, or a surrender of the Demised Premises.

(b) The failure of the Landlord to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or any of the Rules and Regulations annexed hereto, or hereafter adopted by the Landlord, as provided in Section 19 above, shall not be deemed a waiver of such violation, nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by the Landlord of rent, with knowledge of the breach of any covenant of this Lease, shall not be deemed a waiver of such breach. The failure of the Landlord to enforce

any of said Rules and Regulations against the Tenant shall not be deemed a waiver of any such Rules and Regulations. No provisions of this Lease shall be deemed to have been waived by the Landlord unless such waiver is in writing signed by the Landlord.

(c) No payment by the Tenant, or receipt by the Landlord, of a lesser amount than a monthly installment of ANNUAL RENT (or any Additional Rent) shall be deemed to be other than on account of the earliest such installment, nor shall any endorsement or statement on any check or letter accompanying any check or payment as rent, be deemed an accord and satisfaction, and the Landlord may accept such check or payment without prejudice to the Landlord's right to recover the balance of such installment, or pursue any other remedy provided in this Lease.

### **SECTION 31. CONDEMNATION**

(a) In the event of a Taking of the whole of the Demised Premises, this Lease, and the Term of this Lease, shall terminate as of the date of such Taking. If only a part of the Demised Premises shall be so taken, then, except as otherwise provided in this subsection, this Lease, and the Term of this Lease, shall continue in force and effect, but, from and after the date of the Taking, the ANNUAL RENT and any Additional Rent shall be equitably reduced on the basis of the portion of the Demised Premises so taken. If more than 10% of the total area of the Demised Premises is taken, the Landlord, at the Landlord's option, may give the Tenant within sixty (60) days next following the date upon which the Landlord shall have received notice of the Taking, a thirty (30)-day notice of termination of this Lease; and, if more than 50% of the total area of the Demised Premises shall be taken, or, if, by reason of such Taking, the Tenant no longer has reasonable use of the Demised Premises, the Tenant, at the Tenant's option, may give to the Landlord within sixty (60) days next following the date upon which the Tenant shall have received notice of such Taking, a thirty (30)-day notice of termination of this Lease. In the event any such thirty (30)-day notice of termination is given by the Landlord or the Tenant, this Lease, and the Term of this Lease, shall terminate upon the expiration of said thirty (30) days. In the event of the termination of this Lease pursuant to any of the foregoing provisions of this Subsection 31(a) then, to the extent permitted by applicable law and such Taking, the Tenant shall have access to the Demised Premises in order to remove the Tenant's Special Installations and any other personal property then owned by the Tenant, and which the Tenant is entitled to remove pursuant to this Lease during the period of thirty (30) days from the date the Tenant is permitted access therefor. In the event of any Taking that does not result in the termination of this Lease, the Landlord shall repair, alter, and restore the remaining portions of the Demised Premises to their former condition to the extent that the same may be feasible.

(b) The Landlord shall have the exclusive right to receive any and all awards made for damages to the Demised Premises, and leasehold hereby created, or any one of them, accruing by reason of a Taking or by reason of anything lawfully done in pursuance of public or other authority. The Tenant hereby releases and assigns to the Landlord all the Tenant's rights to such awards, and covenants to deliver such further assignments and assurances thereof as

the Landlord may from time to time request, hereby irrevocably designating and appointing the Landlord as its attorney-in-fact to execute and deliver in the Tenant's name and behalf all such further assignments therefor. However, the Tenant reserves any rights to any award for its moving expenses, or to any other special award not constituting part of the award, to which the Landlord would otherwise be entitled.

**SECTION 32. ASSIGNMENT AND SUB-LETTING PROHIBITED**

(a) Tenant recognizes the uniqueness of the Building and the uses to which it is being put and that the expertise, character and methods of operation of each tenant, as well as the effect each tenant will have on other tenants and the neighborhood, are taken into consideration as a basis for renting to a particular tenant. Accordingly, Tenant shall not mortgage, pledge, encumber, sell, assign or transfer this Lease, in whole or in part, or sublease all or any part of the Demised Premises, or permit the use or occupation of all or any part of the Demised Premises by any concessionaire, licensee or other party, without on each occasion first obtaining Landlord's written consent which may be granted or withheld by Landlord in its sole and absolute discretion. Tenant shall reimburse Landlord promptly, as Additional Rent, for reasonable legal and other expenses incurred by Landlord in connection with any request by Tenant for consent required under this Article.

(b) If Tenant's interest in this Lease is assigned, whether or not in violation of the provisions of this Article, Landlord may collect rent from the assignee; if the Demised Premises or any part thereof are subject to, or occupied by, or used by, any person other than Tenant, whether or not in violation of this Article, Landlord, after default by Tenant under this Lease, may collect rent from the subtenant, user or occupant. In either case, Landlord shall apply the net amount collected to the rents reserved in this Lease, but neither any such assignment, subletting, occupancy or use, whether with or without Landlord's prior consent, nor any such collection or application, shall be deemed a waiver of any term, covenant or condition of this Lease or the acceptance by Landlord of such assignee, subtenant, occupant or user as tenant. The consent by Landlord to any assignment or subletting shall not relieve Tenant from its obligation to obtain the express prior consent of Landlord to any further assignment or subletting. Neither any assignment of Tenant's interest in this Lease nor any subletting, occupancy or use of the Demised Premises or any part thereof by any person other than Tenant, nor any collection of rent by Landlord from any person other than Tenant as provided in this paragraph, nor any application of any such rent as provided in this paragraph shall, in any circumstances, relieve Tenant of its obligation fully to observe and perform the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed.

**SECTION 33. BROKERAGE BY TENANT; INDEMNITY**

(a) Both parties to this Lease hereby warrant and represent to each other that they have not, directly or indirectly, dealt with any broker, agent, or other person with respect to this Lease; and both parties hereby agree to indemnify, hold harmless, and defend the other party from any claims for a brokerage commission, or other compensation, by any broker,

agent, or other person engaged by either party in connection with the execution and delivery of this Lease.

#### **SECTION 34. TRANSFEREE LIABILITY**

- (a) In the event of:
  - (i) any conveyance or other transfer of the Landlord's interest in the Demised Premises; or
  - (ii) any assignment of this Lease—

**then**, all liabilities and obligations of the grantor, transferor, lessor, or assignor, as the case may be, shall terminate, and all liabilities and obligations of the Landlord shall, *ipso facto*, be binding upon the new owner or lessee.

#### **SECTION 35. SURRENDER**

(a) Upon the expiration or other termination of the Term of this Lease, except as otherwise expressly provided elsewhere in this Lease, the Tenant shall remove all its property, and shall quit and surrender to the Landlord the Demised Premises, broom clean, in good order and condition, excepting only ordinary wear and tear, damage by fire, or other casualty. The Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term of this Lease.

#### **SECTION 36. LEASE AS ENTIRE AGREEMENT**

(a) This Lease contains the entire agreement between the parties, and all prior negotiations, representations, warranties, and agreements with respect to the Demised Premises, or this Lease, are merged in this Lease. This Lease may not be changed, modified, or discharged, in whole or in part, orally, and no executory agreement shall be effective to change, modify, or discharge, in whole or in part, this Lease, or any obligations under this Lease, unless such agreement is set forth in a written instrument, executed by the party against whom enforcement of the change, modification, or discharge is sought.

#### **SECTION 37. BINDING EFFECT; INDEPENDENT COVENANTS**

(a) The terms and provisions of this Lease shall be binding upon and inure to the benefit of the Landlord and the Tenant and their permitted respective successors, and, except as otherwise provided in Section 32 above, their assigns, subject, however, to the provisions of Section 27 and Section 28 above.

(b) The Landlord and the Tenant each warrant and represent on their own behalf

that they are duly authorized to execute and enter into this Lease.

(c) The Tenant's agreements to pay ANNUAL RENT, Additional Rent, and other payments under this Lease are independent covenants. The Tenant shall have no right to withhold any payment of ANNUAL RENT, Additional Rent, or other payments because of any breach or alleged breach by the Landlord under this Lease, except as expressly set forth elsewhere in the Lease. Each term and provision of this Lease to be performed by the Tenant shall be construed to be both a covenant and a condition.

### **SECTION 38. ESTOPPEL CERTIFICATES**

(a) The Tenant agrees from time to time, upon not less than fifteen (15) days prior written request by the Landlord, to execute, acknowledge, and deliver to the Landlord a statement in writing certifying, as applicable, that this Lease is unmodified and in full force and effect, and that the Tenant has no defenses, offsets, or counterclaims against its obligations to pay the ANNUAL RENT, any Additional Rent, and other charges hereunder; and to perform its other covenants under this Lease; and that there are no uncured defaults of the Landlord or the Tenant under this Lease (or, if there have been any modifications, that the same are in full force and effect as modified, and stating the modifications and, if there are any defenses, offsets, counterclaims, or defaults, setting them forth in reasonable detail); and the dates to which the ANNUAL RENT, any Additional Rent, and other charges have been paid. Any such statement delivered pursuant to this paragraph may be relied upon by any purchaser, lessee, or Mortgagee of the Land or Demised Premises, or any assignee of any Mortgagee of the Land or Demised Premises.

### **SECTION 39. SUBORDINATION; RIGHTS OF MORTGAGEE**

(a) The Tenant agrees, at the Landlord's request, to execute and deliver promptly any certificate or other instrument that the Landlord may reasonably request subordinating this Lease and all rights of the Tenant under this Lease to any Mortgage, and to all advances made under any such Mortgage, provided that the holder of any such Mortgage shall execute and deliver to the Tenant a non-disturbance agreement to the effect that in the event of any foreclosure of such Mortgage, such holder agrees not to name the Tenant as a party defendant to such foreclosure, nor to disturb its possession under this Lease so long as there shall be no default by the Tenant under this Lease.

(b) The Tenant agrees that if this Lease is so subordinated, no entry under any such Mortgage or sale for the purpose of foreclosing the same shall be regarded as an eviction of the Tenant, constructive or otherwise, or give the Tenant any right to terminate this Lease, whether it attorns or becomes tenant of the Mortgagee or new owner or not.

(c) Nothing contained in Sections 39(a) or (b) above, or in any such non-disturbance agreement or non-disturbance provision, shall, however, affect the prior rights of the holder of any first Mortgage with respect to the proceeds of any award in condemnation, or of any fire



insurance policies affecting the Demised Premises, or impose upon any such holder any liability:

- (i) for the erection or completion of the Demised Premises, or;
- (ii) in the event of damage or destruction to the Demised Premises by fire or other casualty, for any repairs, replacements, rebuilding, or restoration, except such repairs, replacements, rebuilding, or restoration as can reasonably be accomplished from the net proceeds of insurance actually received by, or made available to, such holder, or;
- (iii) for any default by the Landlord under this Lease occurring prior to any date upon which such holder shall become the Tenant's landlord, or;
- (iv) for any credits, offsets, or claims against the rent under this Lease as a result of any acts or omissions of the Landlord committed or omitted prior to such date, and any such agreement or provisions may so state.

#### **SECTION 40. METHOD OF GIVING BILLS AND NOTICES**

(a) Except as otherwise herein provided, any bill, statement, request, notice, or communication that may be desired, or be required to be given, made, or rendered to either the Tenant or the Landlord by the other party shall be in writing, and deemed sufficiently given, made, or rendered, if addressed to the appropriate party's Original Address, or subsequent address changed as specified in this Section 40, and delivered by hand, deposited by an overnight courier service, or sent by certified or registered mail, postage pre-paid, return receipt requested. Either party may at any time change its address for the aforementioned purposes by notice thereof given to the other party in the same manner.

#### **SECTION 41. APPLICABLE LAW**

(a) This Lease shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

#### **SECTION 42. HEADINGS FOR REFERENCE ONLY**

(a) The Table of Contents and section headings in this Lease are for convenience and reference only, and in no way define or limit the scope or content of this Lease, or in any way affect its provisions.

#### **SECTION 43. SEVERABILITY**

(a) If any term of this Lease, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be

valid and be enforced to the fullest extent permitted by law.

**IN WITNESS WHEREOF**, the Landlord and the Tenant have executed, sealed, and delivered this Lease as of the day and year indicated below.

**SIGNATURES**

By: Arlington Redevelopment Board

By: Chair, Andrew Bunnell

\_\_\_\_\_

By: Arlington Center for the Arts

By: Executive Director, Linda Shoemaker

\_\_\_\_\_

DATE EXECUTED: \_\_\_\_\_

## **TENANT RULES AND REGULATIONS**

1. The sidewalks, entrances, passages, vestibules, stairways, corridors, or halls in or about the Demised Premises shall not be obstructed, or encumbered, or used for any purpose other than ingress or egress to and from the Demised Premises.
2. No awnings or other projections shall be attached to the outside walls or windows of the Demised Premises without the prior written consent of the Landlord. No curtains, blinds, shades, or screens shall be attached to, or hung in, or used in connection with, any window or door of the Demised Premises without the prior written consent of the Landlord. Such awnings, projections, curtains, blinds, shades, screens, or other fixtures must be of a quality, type, design, and color, and attached in a manner approved by the Landlord.
3. No articles shall be put in front of, or affixed to, any part of the exterior of the Demised Premises.
4. The water and wash closets, and other plumbing fixtures, shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags, or other substances shall be thrown therein. Neither the Landlord nor an occupant shall bring or keep, or permit to be brought or kept, any inflammable, combustible, or explosive fluid, material, chemical, or substance in or about the Demised Premises. The provisions of this Rule and Regulation shall be subject, in all respects, to the provisions of this Lease.
5. No motor vehicles, or animals of any kind (other than caged small specimen animals) shall be brought into, or kept in or about, the Building. This sentence shall be subject in all respects to the provision of this Lease. Neither the Landlord nor any occupant shall cause, or permit, any unusual or objectionable odors to emanate from the Demised Premises.
6. Except as may be expected in connection with the use of the Demised Premises as described in Section 15 of the Lease to which these Rules and Regulations are attached, neither the Landlord nor any occupant shall make, or permit to be made, unseemly or disturbing noises, or disturb or interfere with the neighborhood, whether by the use of any musical instrument, radio, television set, or other audio device, unmusical noise, whistling, singing, or in any other way. Nothing shall be thrown out of any doors or windows.
7. No additional lock or bolts of any kind shall be placed upon any of the doors or windows, nor shall any changes be made in locks, or the mechanism thereof, without the Landlord's prior written consent, such consent not unreasonably to be withheld. The Tenant must, upon the termination of its tenancy, restore to the Landlord all keys, either furnished to, or otherwise procured by, the Landlord.

8. If the Demised Premises become infested with vermin, the Tenant, at its sole cost and expense, shall cause such vermin on the Demised Premises to be exterminated from time to time, to the satisfaction of the Landlord, and shall employ such exterminators therefor as shall be approved by the Landlord. If the cause of the vermin is located on other than the Demised Premises, the Landlord will coordinate with the Tenant in taking action to ensure that the source is exterminated



## Town of Arlington, Massachusetts

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### Approval of Meeting Minutes

#### Summary:

8:15-8:30p.m.

- *Board members will approve Meeting Minutes from April 24, 2017 and May 1, 2017.*

#### ATTACHMENTS:

Type	File Name	Description
▣ Reference Material	draft_ARB_Minutes_04242017.pdf	Draft Meeting Minutes April 24, 2017
▣ Reference Material	draft_ARB_Minutes_05012017.pdf	Draft Meeting Minutes May 1, 2017

**Arlington Redevelopment Board**  
**April 24, 2017 Minutes**  
**Town Hall Annex, Second Floor Conference Room – 7:30pm**

This meeting was recorded by ACMi.

**PRESENT:** Andrew Bunnell (Chair), Kin Lau, David Watson, Andrew West, Eugene Benson

**STAFF:** Jennifer Raitt, Laura Wiener

**GUESTS:** Madeleine Aster, Michael Brandon

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**Correspondence:** Letter from Madeleine Aster, on behalf of Alewife and North Cambridge Neighborhoods.

Mr. Bunnell opened the meeting at 7:30PM and moved to the third item on the agenda, Approval of Meeting Minutes from March 27, 2017 and April 3, 2017.

Mr. West moved to approve the Minutes from March 27, 2017, Mr. Benson seconded. All voted in favor. (5-0)

Mr. Watson moved to approve the Minutes from April 3, 2017 as amended. Mr. West seconded. Mr. Benson abstained. All voted in favor. (4-0)

Mr. Bunnell moved to the first item on the agenda, ARB Schedule through Summer 2017. Jennifer Raitt, Director, Planning and Community Development shared the Board's current summer meeting schedule and made recommendations to change dates to accommodate Board members' and staff vacations. June meetings were changed to June 12 and 26. July 3 meeting was cancelled. The rest of the summer meetings will remain as scheduled. Jenny further reminded the Board that the Arts and Culture Action Plan final Public Forum is June 6, 2017 and the Zoning Recodification Working Group's Public Forum is scheduled for July 13, 2017.

Mr. Lau moved to approve the May, June, July and August meeting schedule as amended. Mr. West seconded. All voted in favor. (5-0).

Mr. Bunnell moved to the next item on the Agenda, ARB Membership/ Representation on Committees. Ms. Raitt reviewed the Board's current list of Committee obligations and asked if any changes were sought. Mr. Bunnell moved to replace Kin Lau with Eugene Benson as the ARB designee to the Community Preservation Committee. Mr. Lau seconded. All voted in favor. (5-0). Mr. Lau moved to replace Andrew Bunnell with Kin Lau as the ARB designee to the Senior Center Feasibility Study Committee. Mr. West seconded. All voted in favor. (5-0).

Ms. Raitt shared correspondence received from Madleine Aster regarding the Residences at Alewife in Cambridge located at 195 and 211 Concord Turnpike. The letter requested the Board to consider appealing the approved decision. A summary prepared by Laura Wiener was provided and the Board was asked if they would like to comment to the Cambridge Planning Board on the project.

Mr. Benson sought advice from Town Counsel as to whether the Board had legal standing to appeal. Ms. Raitt stated that Town Counsel was contacted and confirmed that the Board had no standing but could provide a comment letter if desired.

Michael Brandon, North Cambridge Stabilization Committee, stated that he thought the Board did have standing.

Mr. Bunnell said that the Board would continue the discussion at the May 15 meeting. He asked staff if TAC could review the Traffic Impact Study before that meeting.

Mr. Lau moved to adjourn to Town Meeting. Mr. West seconded. All voted in favor. (5-0).



**Arlington Redevelopment Board**  
**May 1, 2017 Minutes**  
**Town Hall Annex, Second Floor Conference Room – 7:30pm**

This meeting was recorded by ACMI.

**PRESENT:** Kin Lau, David Watson, Andrew West, Eugene Benson

**STAFF:** Jennifer Raitt, Laura Wiener

**ABSENT:** Andrew Bunnell

**GUESTS:** Rajwant Singh

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**Correspondence:** None.

Mr. West opened the meeting at 7:30PM and moved to the first item on the agenda, Public Hearing for 444 Massachusetts Avenue, Docket #2943, to re-open a Special Permit. Rajwant Singh, Owner, Singh Saab, sought permission to construct and replace the existing sign.

Mr. Lau shared his concern with doubling the size of the written area of the sign, compared to the existing sign. He felt the design was inappropriate for this prominent location in Arlington Center. Mr. Watson shared his concern for the size, lighting and style. Mr. West asked for clarification on the awning. He suggested keeping the lettering of the sign the same size as the existing sign, and to consider keeping the current lighting with overhead gooseneck lamps, not internally lit, as proposed.

Mr. Lau moved to approve, Special Permit Docket #2943, subject to administrative approval. If the Applicant re-submits a design that is similar to the existing sign, in size, lighting and design, the sign can be approved administratively by the Director. If there are changes to the size or lighting, or if there is an awning proposed, it should come back to the Board. Mr. Watson seconded. All voted in favor. (4-0).

Mr. Lau moved to adjourn. Mr. Watson seconded. All voted in favor. (4-0).



## Town of Arlington, Massachusetts

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### Correspondence Received

#### Summary:

- *Letter dated May 3, 2017, Jennifer Ryan, President, Arlington Land Trust, re: proposed residential project, Lanes & Games site.*
- *Memo dated May 10, 2017 from the Transportation Advisory Committee*

#### ATTACHMENTS:

Type	File Name	Description
▢ Reference Material	Arlington_Land_Trust_05032017.pdf	Arlington Land Trust, re: proposed residential project, Lanes & Games Site
▢ Reference Material	TAC_05102017.pdf	TAC, re: Residences at Alewife Station



May 3, 2017

**Arlington Land Trust  
Officers**

**President**  
Jennifer Ryan

**Vice President**  
Clarissa Rowe

**Secretary**  
Ann LeRoyer

**Treasurer**  
Brian Rehrig

**Directors**  
Nellie Aikenhead  
Peter Belknap  
Carol Kowalski  
Chris Leich  
John F. Page  
Ted Siegan  
Katie Theoharides

**Advisory Board**  
Nora Frank  
Sean Garballey  
Cathy Garnett  
Jay Kaufman  
Kevin Knobloch  
Anne Paulsen  
Dave Rogers

Andrew Bunnell, Chair  
Arlington Redevelopment Board  
730 Massachusetts Avenue  
Arlington, MA 02476

Dear Mr. Bunnell,

We are writing to urge the Arlington Redevelopment Board (ARB) to appeal the Cambridge Planning Board's recent approval of yet another huge apartment development adjacent to Arlington in the highly stressed Alewife Brook watershed region.

This latest project at the so-called Lanes and Games site across Route 2 from Thorndike Field and the Mugar property will exacerbate long-standing flooding problems and will bring additional traffic into an already overburdened neighborhood.

Although the Alewife T Station is held up as an attraction for "transit-oriented development," the additional influx of potentially 300 to 400 daily commuters will create ripple effects for cars and buses bringing transit users to and from the site. The T already surpasses capacity limits at Alewife, and has a poor track record for dependable, on-time service.

Furthermore, not every resident of the new apartments will use the T to go into Cambridge or Boston. Many will need to drive out of the site via the complex Route 2/16 interchange to reach jobs in surrounding towns and along Route 128 or beyond. Many of them may be tempted to access Lake Street and other local streets in Arlington, creating greater inconvenience for our town's residents and resources.

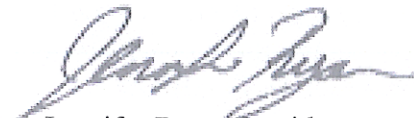
As we have learned through studying the proposed development of the Mugar property, the fragile Alewife/Fresh Pond floodplain is already being negatively affected by recent developments in Cambridge and Belmont. Projected increases in flooding and higher groundwater levels due to the impacts of climate change will only aggravate the situation. East Arlington residents regularly experience serious yard and basement flooding as water is displaced across Route 2. The threat of air- and water-borne pollution from lead and chemicals in the soil is a further concern if the site is to be excavated for development.

We support the East Arlington community and the Fresh Pond and North Cambridge neighborhood groups in drawing renewed attention to limiting large new developments in this designated floodplain, which also extends along Concord Avenue into Belmont.

As a "party in interest" for this particular project, the ARB on behalf of the Town of Arlington should challenge this action of the Cambridge Planning Board during the designated timeframe for appeals.

Thank you for your consideration.

Sincerely,



Jennifer Ryan, President

cc: Adam Chapdelaine, Arlington Town Manager  
Douglas Heim, Arlington Town Counsel  
Jennifer Raitt, Director of Planning and Community and Development  
Board of Selectmen



## **TRANSPORTATION ADVISORY COMMITTEE**

Arlington Planning Department, 730 Mass Ave,  
Arlington MA, c/o Laura Wiener

**To:** Arlington Redevelopment Board

**From:** Transportation Advisory Committee (TAC)

**Subject:** Residences at Alewife Station

**Date:** May 10, 2017

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This is in response to your request that the Arlington Transportation Advisory Committee (TAC) review the Traffic Impact Study for the Residences at Alewife Station, located at 195 and 211 Concord Turnpike in Cambridge, related to its impacts on Arlington. The Study was reviewed by a Working Group of TAC, made up of Howard Muise (Chair), Jeffrey Maxtutis, Scott Smith, Chuck Giroux, and Laura Wiener.

We found that there will be little direct impact on traffic in Arlington. There will likely be some second order impacts from the slight increase in congestion at the already congested intersections of Route 2/Alewife Brook Parkway and Massachusetts Avenue/Alewife Brook Parkway. At Alewife Station there will be an increase in vehicles, pedestrians and bicycles accessing the station from the project. Traffic exiting the project site will lead to an increase in traffic on the access road from Route 2 eastbound to the Station, impacting both bus riders and motorists. Traffic returning to the site from the east will impact the Lake Street ramps to and from Route 2 as a turnaround. Also expected is some impact on the station access road from the increased number of pedestrians and cyclists crossing from the south side of the road to the north side in order to approach the train station. The increased traffic on the Alewife access road will also affect those Arlington residents who use the Minuteman Bikeway to travel to Alewife, and need to cross the access road.

There are two areas where we suggest re-evaluating: Transportation Demand Management (TDM) Measures and the Transportation Monitoring and Reporting Program (TMRP). The TDM mitigation calls for at least two car-sharing spaces on-site, if desired by a local car-share company. We suggest trying to maximize the number of car-share spaces as a technique to reduce auto ownership and parking demand. The TMRP states that the Transportation Coordinator shall implement a monitoring program to include: annual monitoring of mode split, counts of parking space utilization and ownership. There is no language stating what additional mitigation should be taken if the estimated trip generation and mode splits of the

### **Transportation Advisory Committee Members:**

Wayne Chouinard, Seth Federspiel, Charles Giroux, Mike Gordon, Pamela Heidell,  
Brian Kmetz, Melissa Laube, Jeffrey Maxtutis, Marjorie Moores, Howard Muise,  
Officer Corey Rateau, Victor Rivas, Scott Smith, Laura Wiener

**Web site:** [www.arlingtonma.gov/tac](http://www.arlingtonma.gov/tac)

project are exceeded. We suggest identifying additional measures to mitigate project vehicle trip generation if it exceeds thresholds/projections.

Overall, we agree with the Traffic Impact Study that the project will not have a significant direct impact on Arlington traffic in Arlington. However it should be noted that many intersections in the area are already congested, and will continue to be congested after this project is built.

Respectfully submitted,

A handwritten signature in cursive script that reads "Howard Muise".

Howard Muise, Chair  
Arlington Transportation Advisory Committee

**Transportation Advisory Committee Members:**

Wayne Chouinard, Seth Federspiel, Charles Giroux, Mike Gordon, Pamela Heidell,  
Brian Kmetz, Melissa Laube, Jeffrey Maxtutis, Marjorie Moores, Howard Muise,  
Officer Corey Rateau, Victor Rivas, Scott Smith, Laura Wiener

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